



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R1–ES–2023–0074; FXES11130100000-234F1611MD-FF01E00000]

RIN 1018–BG89

### Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bear in the North Cascades Ecosystem, Washington State

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (USFWS or Service), propose to establish a nonessential experimental population (NEP) of the grizzly bear (*Ursus arctos horribilis*) within the U.S. portion of the North Cascades Ecosystem (NCE) in the State of Washington under section 10(j) of the Endangered Species Act of 1973, as amended (Act or ESA). Establishment of this NEP is intended to support reintroduction and recovery of grizzly bears within the NCE and provide the prohibitions and exceptions under the Act necessary and appropriate to conserve the species within a defined NEP area. The proposed NEP area includes most of the State of Washington except for an area in northeastern Washington that encompasses the Selkirk Ecosystem Grizzly Bear Recovery Zone. The best available data indicate that reintroduction of the grizzly bear to the NCE, within the NEP area, is biologically feasible and will promote the conservation of the species. We are seeking comments on this proposed section 10(j) rule.

**DATES:** We will accept comments received or postmarked on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**), must be received by 11:59 p.m. eastern time on the closing date.

*Public information sessions and public hearings:* In conjunction with the National Park Service (NPS), we will hold public information meetings and public hearings during the public comment period. The public information meetings and hearings address the reintroduction proposal by the NPS and USFWS, including this proposed rule and the associated draft environmental impact statement (DEIS).

The dates, times, and specific locations of the meetings will be posted on the internet at <https://parkplanning.nps.gov/NCEGrizzly>. If unable to access the internet, please call 360–753–4370 for more information about meeting dates, times, and locations. During the public hearings we will also take oral comments on this proposed rule. The public information meetings and hearings will be physically accessible to people with disabilities. Please direct requests for reasonable accommodations (e.g., auxiliary aids or sign language interpretation) to the person listed in **FOR FURTHER INFORMATION CONTACT** at least 7 working days prior to the date of the meeting you wish to attend.

*Information Collection Requirements:* In this proposed rule, we propose to authorize take of grizzly bears involved in conflict, in certain limited situations. Such authorizations may require submittal of information to the Service (e.g., information about grizzly bear observations or depredation events) and this information collection is also subject to public comment. If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the *Federal Register*. Therefore, such comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see “Information Collection” section below under **ADDRESSES**) by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** *Comments on the proposed nonessential experimental population:* You may submit comments regarding this proposed rule by one of the following methods:

(1) *Electronically*: Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter Docket No. FWS–R1–ES–2023–0074, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Proposed Rules to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2023–0074, U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

(3) *By oral comments at a public hearing*: Although written comments are preferred, we will accept oral comments submitted during one of the public hearings described above. Oral comments will be transcribed and posted as written comments.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

*Comments on Information Collection Requirements*: Send your comments on the information collection request to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov); or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference OMB Control Number 1018-BG89 in the subject line of your comments.

*Availability of supporting materials*: This proposed rule is available at <http://www.regulations.gov> under Docket No. FWS–R1–ES–2023–0074. Hardcopies of the documents are also available for public inspection at the address shown in **FOR FURTHER INFORMATION CONTACT**. Additional supporting information that we developed for this proposed rule is available at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Brad Thompson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 500 Desmond Drive, Suite 102, Lacey, WA 98503; telephone 360–753–9440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, please see docket FWS–R1–ES–2023–0074 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

## **SUPPLEMENTARY INFORMATION:**

### **Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible.

Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments regarding:

- (1) The proposed NEP area;
- (2) Management zone boundaries;
- (3) Proposed management flexibility within each management zone;
- (4) Proposed measures to prevent and minimize human–grizzly bear conflicts;
- (5) Potential adverse effects to the grizzly bear donor populations;
- (6) Proposed adaptive management toward achieving population goals; and
- (7) The biological or ecological requirements of the grizzly bear as related to the proposed NEP area, management zones, or proposed regulations.

Please note that by separate *Federal Register* notice of availability on this same date by the Environmental Protection Agency, the NPS and USFWS are also soliciting public comments

on the draft environmental impact statement (DEIS) (NPS and USFWS 2023) for the agencies' proposed reintroduction of grizzly bears to the U.S. portion of the NCE. The DEIS analyzes the potential environmental impacts associated with the proposed reintroduction and designation of a nonessential experimental population. Written comments specific to the DEIS should be made to the NPS in accordance with that separate notice; more information can be found on the internet at <https://parkplanning.nps.gov/NCEGrizzly>. Comments specific to this proposed section 10(j) rule should be made to the USFWS docket specified in this document (see **ADDRESSES** above). As noted above, while we prefer written comments on this proposed rule, we will take oral comments at the scheduled public hearings.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you provide comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions as well as written transcripts of any oral comments made regarding the proposed rule at a public hearing on <https://www.regulations.gov>.

## **Peer Review**

In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), and the internal memorandum clarifying the USFWS's interpretation and implementation of that policy (USFWS in litt. 2016), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the *Federal Register*. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

### **Previous Federal Actions**

The grizzly bear was first federally listed under the Act in 1975 as a threatened species in the conterminous United States (40 FR 31734, July 28, 1975). The listing included special regulations deemed necessary and advisable for the conservation of the species in accordance with section 4(d) of the Act. The section 4(d) regulations for grizzly bear were revised in 1985, 1986, and again in 1992 (50 FR 35086, August 29, 1985; 51 FR 33753, September 23, 1986; 57 FR 37478, August 19, 1992). The USFWS proposed critical habitat for the grizzly bear in 1976 (41 FR 48757, November 5, 1976); however, the designation was never finalized. On February 6, 2023, we announced positive 90-day findings on two petitions to delist the grizzly bear in two specific ecosystems, the Northern Continental Divide Ecosystem and the Greater Yellowstone Ecosystem (88 FR 7658, February 6, 2023). We subsequently initiated a status review to determine whether the petitioned actions are warranted. For a full history of actions related to the grizzly bear, please see our Environmental Conservation Online System (ECOS) species profile at <https://ecos.fws.gov/ecp/species/7642>.

The NCE, where we are proposing to reintroduce grizzly bears, is one of six recovery zones designated to recover grizzly bears in the lower 48 States. We received and reviewed five petitions requesting a change in status for the NCE grizzly bear population from a threatened to

an endangered species since 1990 (55 FR 32103, August 7, 1990; 56 FR 33892, July 24, 1991; 57 FR 14372, April 20, 1992; 58 FR 43856, August 18, 1993; and 63 FR 30453, June 4, 1998). In response to these petitions, we determined that the NCE grizzly bear population warranted a change to endangered status. We continued to find that these petitions were warranted but precluded through our annual Candidate Notice of Review (CNOR) process through 2022 (87 FR 26152, May 3, 2022; 88 FR 41560, June 27, 2023). However, we found in our 2023 CNOR that the NCE no longer contains a population based on: (1) the amount of search effort without finding any evidence of grizzly bears or a confirmed population; (2) a limited number of grizzly bear detections in the NCE in the past few decades; and (3) the length of time since the last confirmed detection in 1996 (88 FR 41560, June 27, 2023).

### **Background and Biological Information**

We provide detailed background information on grizzly bears in a separate Species Status Assessment (SSA) (USFWS 2022, entire). Information in the SSA is relevant to reintroduction efforts for grizzly bears that may be undertaken in Washington, and it can be found along with this proposed rule at <https://www.regulations.gov> in Docket No. FWS–R1–ES–2023–0074 (see *Supporting and Related Material*). We summarize relevant information from the SSA below.

### ***Taxonomy and Species Description***

Grizzly bears are a member of the brown bear species (*U. arctos*) that occurs in North America, Europe, and Asia. In the lower 48 States, the grizzly bear subspecies occurs in a variety of habitat types in portions of Idaho, Montana, Washington, and Wyoming. Grizzly bears weigh up to 800 pounds (363 kilograms) and live more than 25 years in the wild. Grizzly bears are light brown to nearly black and are so named for their “grizzled” coats with silver or golden tips (USFWS 2022, p. 40).

### ***Historical and Current Range***

Historically, grizzly bears occurred throughout much of the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska. Prior to

European settlement, an estimated 50,000 grizzly bears were distributed in one large contiguous area throughout all or portions of 18 western States (i.e., Washington, Oregon, California, Idaho, Montana, Wyoming, Nevada, Colorado, Utah, New Mexico, Arizona, North Dakota, South Dakota, Minnesota, Nebraska, Kansas, Oklahoma, and Texas). Populations declined in the late 1800s with the arrival of European settlers, government-funded bounty programs, and the conversion of habitats to agricultural uses. Grizzly bears were reduced to less than 2 percent of their former range in the lower 48 States by the time the species was listed as threatened under the Act in 1975, with an estimated population (in the lower 48 States) of 700 to 800 individuals (USFWS 2022, p. 4).

Grizzly bear populations in the lower 48 States consist of approximately 2,000 bears and currently occupy portions of Idaho, Montana, Wyoming, and Washington. Outside the lower 48 States, approximately 55,000 grizzly bears exist in the largely unsettled areas of Alaska and western Canada.

### ***Grizzly Bear Ecosystems and Recovery Zones***

The Grizzly Bear Recovery Plan refers to six grizzly bear ecosystems to target species' recovery (Service 1993, p. 10). Currently, approximately 2,000 grizzly bears exist primarily in 4 ecosystems in the lower 48 States: the Northern Continental Divide Ecosystem (NCDE), the Greater Yellowstone Ecosystem (GYE), the Cabinet-Yaak Ecosystem (CYE), and the Selkirk Ecosystem. There are no known grizzly bear populations in the remaining two ecosystems: the North Cascades Ecosystem (NCE) or Bitterroot Ecosystem (BE), nor any known populations outside these ecosystems, although we have documented bears, primarily solitary, outside these ecosystems. Current populations in the NCDE, Selkirk Ecosystem, and CYE extend into Canada to varying degrees. Although there is currently no known population in the NCE, it constitutes a large block of contiguous habitat that spans the international border. Although the USFWS has not explicitly defined ecosystem boundaries, we have identified recovery zones at the core of



each ecosystem (USFWS 2022, p. 56) (figure 1). Therefore, each recovery zone pertains to a specific area within the larger ecosystem.

At the time of the original recovery plan, grizzly bear distribution within the conterminous United States was primarily within and around areas identified as recovery zones (USFWS 1993, pp. 10–13, 17–18). The Service identified the six recovery zones, which correspond with the six ecosystems, as follows:

(1) the GYE Recovery Zone in northwestern Wyoming, eastern Idaho, and southwestern Montana (9,200 sq mi (24,000 sq km)) at approximately 1,063 individuals inside the Demographic Monitoring Area (Haroldson et al. 2022, p. 13);

(2) the NCDE Recovery Zone of north-central Montana (9,600 sq mi (25,000 sq km)) at approximately 1,114 individuals (Costello and Roberts 2022, p. 10);

(3) the NCE Recovery Zone of north-central Washington (9,500 sq mi (25,000 sq km)), although no functional population of grizzly bears currently exists in the NCE (see *Status of Grizzly Bears in the North Cascades Ecosystem*, below);

(4) the Selkirk Ecosystem Recovery Zone of northern Idaho, northeastern Washington, and southeastern British Columbia (2,200 sq mi (5,700 sq km)) at approximately 83 individuals (Proctor et al. 2012, p. 31);

(5) the CYE Recovery Zone of northwestern Montana and northern Idaho (2,600 sq mi (6,700 sq km)) at approximately 60–65 bears (Kasworm et al. 2022a, p. 42); and

(6) the Bitterroot Recovery Zone of central Idaho and western Montana (5,830 sq mi (15,100 sq km)), although no functional population of grizzly bears currently exists in the BE.

*NCE and NCE Recovery Zone Relation to Proposed Experimental Population*

Although the USFWS considers the North Cascades *Ecosystem* to include areas within Canada, the North Cascades *Recovery Zone* is a component of the ecosystem and occurs only within the United States. Throughout this proposed rule, we will reference the broader North Cascades Ecosystem, which includes habitat in Canada, as the “NCE” and reference its recovery

zone (solely within the United States) as the “NCE Recovery Zone.” The proposed nonessential experimental population area (see Proposed Experimental Population below) in this rulemaking action encompasses the entire NCE Recovery Zone and the portion of the larger NCE within the United States.

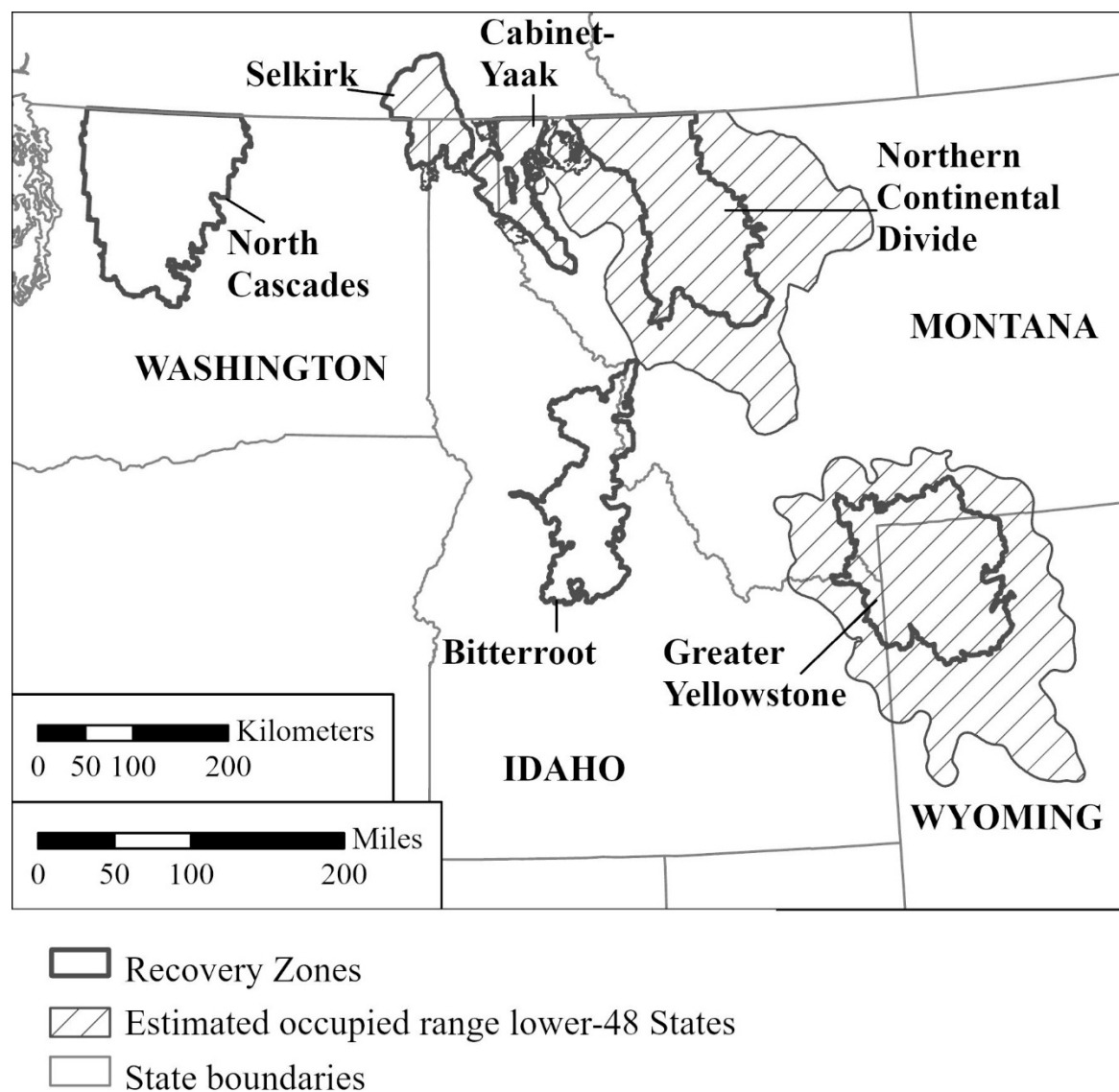


Figure 1. Current estimated distribution of grizzly bears in the lower 48 States and grizzly bear recovery zones.

### ***Behavior and Life History***

Adult grizzly bears are normally solitary except when females have dependent young, but they are not territorial and home ranges of adult bears frequently overlap. Home range sizes vary

among ecosystems because of population densities and habitat productivity. Average home range size for males varies from 183 to 835 square miles (sq mi) (475–2,162 square kilometers (sq km)) and for females from 50 to 138 sq mi (130–358 sq km) across the recovery areas in the United States (USFWS 2022, p. 44).

Grizzly bears have a promiscuous mating system. Mating occurs from May through July with a peak in mid-June. Average age of first reproduction can vary from 3 to 8 years of age. Litter sizes range from one to four cubs, although two is the most common. Cubs are typically born in the den in late January or early February and typically remain with the female for 2.5 years, making the average time between litters (i.e., the interbirth interval) approximately 3 years. Grizzly bears have one of the slowest reproductive rates among terrestrial mammals, resulting primarily from the late age of first reproduction, small average litter size, and the long interbirth interval. A population is made up of numerous overlapping generations. It is possible for mothers, daughters, and granddaughters to be reproductively active at the same time. Grizzly bear females typically cease reproducing some time in their mid-to-late 20s (USFWS 2022, pp. 44–45).

Grizzly bears hibernate for 4 to 6 months each year in winter to cope with seasons of low food abundance. Grizzly bears in the lower 48 States typically enter dens between October and December. In the 2 to 4 months before den entry, bears increase their food intake dramatically during a process called hyperphagia. Grizzly bears must consume foods rich in protein and carbohydrates during this time (between August and November) in order to build up fat reserves to survive denning and post-denning periods. Grizzly bears typically hibernate alone in dens, except for females with young and subadult siblings who occasionally hibernate together. Most dens are located at higher elevations, above 8,000 feet (ft) (2,500 meters (m)) in the GYE and above 6,400 ft (1,942 m) in the NCDE and on slopes ranging from 30 to 60 degrees. Grizzly bears exit their dens between March and May; females with cubs exit later than other adults (USFWS 2022, pp. 45–46).

When not hibernating, grizzly bears use a variety of cover types to rest and shelter. Grizzly bears often select bed sites with horizontal and vertical cover, especially at day bed sites, suggesting that bed site selection is important for concealment from potential threats. The relative importance of cover to grizzly bears was documented in a 4-year study of grizzly bears in the GYE. Of 2,261 aerial radio signals from 46 instrumented bears, 90 percent were located in forest cover too dense to observe the bear (USFWS 2022, p. 47).

Grizzly bears make seasonal movements within their home ranges to locations where food is abundant (e.g., ungulate winter ranges and calving areas, talus slopes). They are opportunistic omnivores and display great diet plasticity, even within a population, shifting their diet according to foods that are most nutritious (i.e., high in fat, protein, and/or carbohydrates) and available. They will consume almost any food available including living or dead mammals or fish, insects, worms, plants, human-related foods, garbage, livestock, and agricultural crops. Cattle and sheep depredation rates are generally higher where bear densities are higher and in later summer months. In areas where animal matter is less available, berries, grasses, roots, bulbs, tubers, seeds, and fungi are important in meeting protein and caloric requirements (USFWS 2022, pp. 47–48).

In general, an individual grizzly bear's habitat needs and daily movements are largely driven by the search for food, water, mates, cover, security, or den sites. Grizzly bears display dietary adjustability across ecosystems and exploit a broad diversity of habitat types. Large intact blocks of land directly influence the quality and quantity of the species' resource needs, highlighting the importance of this habitat factor to all life stages. The larger, more intact, and ecologically diverse the block of land, it follows that high-caloric foods, dens, and cover would be more readily available to individuals. Grizzly bears also need large, intact blocks of land with limited human influence and thus low potential for displacement and human–bear or livestock–bear interactions that could result in human-caused mortality. Grizzly bears in the lower 48 States need multiple resilient ecosystems distributed across a geographical area to reduce the risk

of catastrophic events. A wide distribution of multiple ecosystems ensures that all ecosystems are not exposed to the same catastrophic event at the same time, thereby reducing risk to the species. Grizzly bears also need genetic and ecological diversity across their range in the lower 48 States to adapt to changing environmental conditions (USFWS 2022, pp. 98–100).

Kasworm et al. (2014, entire) evaluated grizzly bear food data from the CYE. The CYE has a Pacific maritime climate that may be similar to the climate in the central and western Cascade Mountains. Therefore, an evaluation of grizzly bear food selection in the CYE could be useful for predicting food habits of grizzly bears in the NCE. Huckleberry (*Vaccinium* spp.) appears to be an important component of the grizzly bear's diet in the CYE. Data were collected over several years, using both isotope analysis on hairs and scat. Isotope analysis showed a highly variable use of meat (6 percent to 37 percent of diet), and that meat was found in many scats in some months (40 percent of dry matter in April and May), including fall (carion). Overall, mammals and shrubs (berries) constituted 64 percent of total dry matter annually. In a diet study of grizzly bears in several western ecosystems, researchers found that adult male grizzly bears were more carnivorous than any other age or sex class, with diets composed of around 70 percent meat (Jacoby et al. 1999, pp. 924–926). Other sex and age groups of grizzly bears displayed diets similar to black bears living in the same areas reflective of diets described by Kasworm et al. 2014 (Jacoby et al. 1999, pp. 924–926).

### ***Threats***

Excessive human-caused mortality including “indiscriminate illegal killing,” defense of life and property mortality, accidental mortality, and management removal was the primary factor contributing to rangewide grizzly bear decline during the 19th and 20th centuries, eventually leading to their listing as a threatened species in 1975 (40 FR 31734, July 28, 1975). Habitat destruction, modification, and isolation and conflict resulting from human access to formerly secure habitat were also identified as threats in the 1975 listing. In the State of Washington, the northwest fur trade was probably the primary driver of rapid grizzly bear

decline in the period 1810–1870. In addition to the influx of trappers, resource extraction and livestock production fragmented and degraded grizzly bear habitat in Washington; a mining boom in the early 1800s created a rapid increase in human activity and habitat alteration to accommodate mining infrastructure and human settlements. In the NCE, grizzly bears were also regularly shot and removed by herders of sheep and cattle, and by the late 1800s habitat fragmentation and isolation of the ecosystem accelerated due to the dominance of logging, as well as the expansion of rural development, road and railway access, and orchards (Almack et al. 1993, p. 3; Rine et al. 2020, pp. 5–13; USFWS 2022, p. 143).

Though human-caused mortality has been greatly reduced since the 1800s, excessive human-caused mortality is still currently the primary factor affecting grizzly bears at both the individual and ecosystem levels (USFWS 2022, p. 7). Human-caused mortalities of grizzly bears currently include: (1) accidental killings; (2) management removals; (3) mistaken-identity killing; (4) defense-of-life kills; and (5) illegal killings or poaching (USFWS 2022, pp. 144–145). Human activities are the primary factor currently impacting habitat security and the ability of bears to find and access foods, mates, cover, and den sites. Users of public lands and recreationists in grizzly bear habitat often increase the risk of human–grizzly conflict by leaving containers of food, garbage, and other bear attractants open or unstored (Gunther et al. 2004, pp. 13–14). However, road access to grizzly bear habitat likely poses the most imminent current threat to grizzly bears by reducing the availability of the necessary large, intact blocks of land; increasing disturbance and displacement of individual bears through increased noise, activity, or human presence; and increasing mortality of individual bears through vehicle strikes or other activities associated with human-caused mortality (USFWS 2022, p. 117).

While existing motorized access levels are unknown on U.S. Forest Service (USFS) lands (USFWS 2022, p. 212), the primary factors related to past destruction and modification of grizzly bear habitat have been reduced through changes in management practices that have been formally incorporated into regulatory documents. In the NCE, approximately 64 percent of the

public lands are designated Wilderness or Inventoried Roadless Areas, and the remaining Federal lands are managed under a “no net loss” approach that supports core habitat. Population monitoring data collected by Federal, State, and Tribal agencies is used to help identify where human–grizzly bear conflicts occur and compare trends in locations, sources, land ownership, and types of conflicts to inform proactive management of human–grizzly bear conflicts.

Fire is a natural part of all grizzly bear ecosystems, but fire frequency, severity, and burned area may increase with late summer droughts predicted under climate change scenarios (Nitschke and Innes 2008, p. 853; McWethy et al. 2010, p. 55; Halofsky et al. 2020, p. 10; Whitlock et al. 2017; pp. 123–131, 216, XXXII). In the North Cascades, wildfire is projected to burn nearly four times more area by the 2080s compared to the historical period of 1980 to 2006 (Halofsky et al. 2020, p. 10). High-intensity fires may reduce grizzly bear habitat quality immediately afterwards by decreasing hiding cover, changing movement patterns, and delaying regrowth of vegetation. Predators with large territories, like grizzly bears, have more flexibility to exploit resources in burned and unburned landscapes (as cited in Nimmo et al. 2019, p. 986). Moreover, in conifer-dominated forest ecosystems, wildfires transition forest to earlier succession stages, which can increase prey densities due to increases in the availability of vegetative food resources (Snobl et al. 2022, pp. 14–15; Lyons et al. 2018, p. 10).

Even if cover is lost, movement is changed, and vegetation growth is delayed, depending on their size and severity, fires may have only short-term adverse impacts on grizzly bears while providing more long-term benefits. For example, fire plays an important role in maintaining an open forest canopy, shrub fields, and meadows that provide for grizzly bear food resources, such as increased production of forbs, root crops, and berries (Hamer and Herrero 1987b, pp. 183–185; Blanchard and Knight 1996, p. 121; Apps et al. 2004, p. 148; Pengelly and Hamer 2006, p. 129). Because grizzly bears have shown resiliency to changes in vegetation resulting from fires, we do not expect altered fire regimes predicted under most climate change scenarios to have significant negative impacts on grizzly bear survival or reproduction, despite the potential short-

term effects on vegetation important to grizzly bears. Climate models predict that the NCE will experience substantial vegetation changes from longer growing seasons, drier summer months and wetter winter and spring months, decreased snowpack, and an increased number of disturbance events that are expected to improve food resources for grizzly bears and thus increase habitat quality (Ransom et al. 2018, p. 26). Modeling of grizzly bear habitat in the North Cascades under various projected climate change scenarios shows increased carrying capacity and increased potential grizzly bear density estimates under all scenarios (Ransom et al. 2023, pp. 6–8; USFWS 2022, table 27, p. 243). The complex relationship between changes in climate, natural processes, and natural and anthropogenic features will ultimately determine the future quality of grizzly bear habitat across the ecosystem (Ransom et al. 2018, entire).

### ***Status of Grizzly Bears in the North Cascades Ecosystem***

In the Service’s 2023 status review, we determined that the NCE no longer contained a population of grizzly bears (88 FR 41560 at 41579, June 27, 2023). We also indicated that we were continuing to evaluate options for restoring grizzly bears to the NCE (88 FR 41560 at 41580, June 27, 2023).

Factors contributing to the extirpation of a functional population of grizzly bears from the NCE include historical habitat loss and fragmentation and human-caused mortality (USFWS 2022, pp. 49–51). Historical records indicate that grizzly bears once occurred throughout the NCE (Bjorklund 1980, p. 7; Sullivan 1983 p. 4; Almack et al. 1993 p. 2, Rine et al. 2020, pp. 10–13). There has been no confirmed evidence of grizzly bears within the U.S. portion of the NCE since 1996 when an individual grizzly bear was observed on the southeastern side of Glacier Peak within the Glacier Peak Wilderness Area. The most recent direct evidence of reproduction in the U.S. portion of the NCE was a confirmed observation of a female and cub on upper Lake Chelan in 1991 (Almack et al. 1993, p. 34).

In the United States, most habitat within the NCE is federally owned and managed by the NPS including North Cascades National Park (NP), Ross Lake National Recreation Area (NRA),



and Lake Chelan NRA, but some areas are managed by the USFS. Sixty-four percent of the NCE Recovery Zone is protected from motorized routes due to designation as Wilderness or protected from roads due to designation as Inventoried Roadless Areas. Despite the lack of recent observations, five studies have evaluated portions of the NCE for grizzly bear habitat suitability (Agee et al. 1989, entire; Almack et al. 1993, entire; Gaines et al. 1994, entire; Lyons et al. 2018, entire; Ransom et al. 2023, entire), and all conclude that the U.S. portion of the NCE has the habitat resources essential for the maintenance of a grizzly bear population.

Grizzly bear populations in Canada are not part of the U.S. listed grizzly bear entity. However, suitable habitat within the NCE spans the international border. The NCE within Canada is relatively isolated from other ecosystems with grizzly bear populations in Canada (Morgan et al. 2019, p. 3). The current range of grizzly bears in British Columbia is divided into 55 Grizzly Bear Population Units (GBPUs) that are used for monitoring and management. The British Columbia North Cascades GBPU is immediately north of the U.S. portion of the NCE and was described as isolated and small with possibly three females remaining (Morgan et al. 2019, p. 19). To the north and west of this GBPU lie the Stein-Nahatlach and the Garibaldi-Pit GBPUs that are also described as small and largely isolated with estimated female populations of 12 and 2, respectively (Morgan et al. 2019, p. 19). All three of these units are ranked as being of extreme management concern (Morgan et al. 2019, p. 21) using the NatureServe methodology, integrating rarity (e.g., range extent, population size), population trend, and severity of threats to produce a conservation status rank for discrete geographical units (Morgan et al. 2019, p. 6). The International Union for the Conservation of Nature classified these populations as critically endangered on their Red List due to small size and isolation (McLellan et al. 2017, p. 2). The Kettle-Granby GBPU lies 60 miles to the northeast of the NCE across the Okanogan River in British Columbia with an estimated female population of 48 grizzly bears in 2018 (Morgan et al. 2019, p. 19). Based on this information there appears to be little demographic or genetic connectivity from other GBPUs to the North Cascades GBPU.

## ***Recovery Efforts to Date***

In accordance with section 4(f)(1) of the Act, the USFWS completed a grizzly bear recovery plan in 1982 (USFWS 1982, entire) and released a revised recovery plan in 1993 (USFWS 1993, entire; other revisions and supplements affecting other populations can be found in ECOS). Recovery plans serve as “road maps” for species recovery—they lay out where we need to go and how to get there through specific actions. Recovery plans are not regulatory documents and are instead intended to provide guidance to the USFWS, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved.

In 1993, the USFWS revised the grizzly bear recovery plan (hereafter, “recovery plan”) to include additional tasks and new information that increased the focus and effectiveness of recovery efforts (USFWS 1993, pp. 41–58). In 1996 and 1997, we released supplemental chapters to the recovery plan to direct recovery in the BE and NCE Recovery Zones, respectively (USFWS 1996; USFWS 1997). In our recovery plan supplement for the NCE Recovery Zone, we outlined the following recovery goals for the U.S. portion of the NCE:

(1) that the population is large enough to offset some level of human-induced mortality and be self-sustaining despite foreseeable influences of demographic and environmental variation; and

(2) reproducing bears are distributed through the NCE Recovery Zone. Such a population may comprise 200–400 grizzly bears in the U.S. portion of the ecosystem (USFWS 1997, p. 3).

This supplement to the recovery plan supported fostering grizzly bear restoration in the NCE, specifically identifying translocations as an alternative for recovering this population.

## ***Interagency Grizzly Bear Committee***

In 1983, the Interagency Grizzly Bear Committee (IGBC) was established “to ensure recovery of viable grizzly bear populations and restoration of their habitats in the lower 48 States

through interagency coordination of policy, planning, management and research” (IGBC 1983, entire). The IGBC consists of representatives from the Service, USFS, NPS, the Bureau of Land Management, the U.S. Geological Survey, and representatives of the State wildlife agencies of Idaho, Montana, Washington, and Wyoming. At the ecosystem level, Native American Tribes that manage grizzly bear habitat and county governments are represented, along with other partners.

The IGBC NCE subcommittee guides and coordinates habitat management and conflict prevention for grizzly bears in the NCE Recovery Zone (USFWS 1997, p. 8). In 1997, the North Cascades NP Superintendent and three National Forest (NF) Supervisors (Mt. Baker-Snoqualmie NF, Okanogan NF, and Wenatchee NF) agreed to a “no-net-loss of core” approach within any bear management unit to protect and secure grizzly bear habitat in the U.S. portion of the NCE (see USFS 1997, entire), and they have managed the national park and national forests using that guidance since. Under this approach, “core area” is defined as the area more than 0.3 mi (500 m) from any open-motorized access route or high-use nonmotorized trail (more than 20 parties per week).

#### *Management Efforts in the NCE and NCE Recovery Zone*

A number of habitat management measures have been implemented within the NCE Recovery Zone to improve habitat connectivity, habitat security, and safety for grizzly bears and humans, in areas where interactions are likely. These measures include management of human access to grizzly bear habitat and improved sanitation and food storage measures to prevent or minimize human–grizzly bear interactions.

Management of human access is one of the most important and significant management strategies for grizzly bears. It includes balancing the need for road and motorized trail access with providing secure areas for grizzly bears. Access management in the NCE Recovery Zone is guided by the “no-net-loss of core” approach described above (USFS 1997, entire). In simplest

terms, this approach indicates that if a road is constructed or opened to motorized travel, another road must be closed to motorized use in order to maintain core habitat.

In an effort to minimize the potential for human-caused mortality of grizzly bears, substantial outreach efforts have been put in place by the NPS and USFS over the last 30 years to reduce unsecured attractants (e.g., garbage, human food) and provide the public with tips on identifying and coexisting with grizzly bears (e.g., Western Wildlife Outreach 2023; Braaten et al. 2013, pp. 7–8). The NPS has service-wide food storage regulations (36 CFR 2.2(a), 2.10(d), and 2.14(a)), including requiring campers to use food storage canisters or park-provided food storage lockers at the North Cascades NPS Complex. In early 2023, Mt. Baker-Snoqualmie NF issued a forest-wide, year-round food storage order. The Okanogan-Wenatchee NF does not have food storage restrictions but continues to place bear-resistant facilities, including food storage lockers, at campgrounds.

It is illegal to negligently feed, attempt to feed, or attract large carnivores to land or a building in Washington State, and doing so may result in an infraction (see Revised Code of Washington (RCW) 77.15.790). There are exceptions for individuals engaging in acceptable practices related to waste disposal, forestry, wildlife control, and farming or ranching operations. Any person who intentionally feeds or attempts to feed or attracts large carnivores to land or a building is guilty of a misdemeanor (see RCW 77.15.792). The Washington Department of Fish and Wildlife (WDFW) has also implemented a regulation that requires black bear hunters to take and pass a bear identification test when hunting black bears in specific areas within grizzly bear recovery zones, with the intent of minimizing the potential for accidental killings of grizzly bears because of mistaken identification (WDFW 2023, p. 70).

#### *State and Canadian Protections*

Grizzly bears are State-listed as an endangered species in Washington (RCW 77.12.020, Washington Administrative Code 220–610–010, Lewis 2019, p. 1). In British Columbia, grizzly bears are ranked as “Special Concern” by both the British Columbia Conservation Data Centre

and federally under Canada's Species at Risk Act (B.C. Conservation Data Centre 2023; SARA 2018). The International Union for Conservation of Nature (IUCN) identifies four populations within British Columbia on the IUCN Red List of Threatened Species, including three that border Washington State with Red List Categories reflecting heightened extinction risk (North Cascades–Critically Endangered, South Selkirk–Vulnerable, and the Yahk/Yaak–Endangered, McLellan et al. 2016, pp. 1–2). Currently, there appears to be little to no demographic or genetic connectivity to the NCE from other populations in Canada.

The feasibility of recovering grizzly bears in the Canadian portion of the NCE is under consideration in British Columbia. First Nations have declared grizzly bears within the North Cascades GBPU as in immediate need of restoration and protection (ONA 2014, entire, Piikani Nation 2018, entire). The British Columbia Government in collaboration with Canadian First Nations have established a Joint Nation partnership to outline population recovery objectives and strategies in a North Cascades Grizzly Bear Stewardship Strategy (in review). The team is also developing a communication strategy to assess public reception for recovery in the area. Additionally, the Provincial Government has identified management options for all grizzly bear populations as outlined in the British Columbia Grizzly Bear Stewardship Framework (in review). Should augmentation efforts occur in British Columbia, it is likely that some grizzly bears reintroduced into the Canadian portion of the ecosystem may move into the proposed NEP area in the United States, either as transients that return to Canada or that ultimately remain in the United States.

### **Statutory and Regulatory Framework**

Section 9 of the Act (16 U.S.C. 1538) sets forth the prohibitions afforded to species listed under the Act. Section 9 of the Act prohibits take of endangered wildlife. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It

mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 et seq.) included the addition of section 10(j), which allows for populations of listed species planned to be reintroduced to be designated as “experimental populations.” The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations will negatively impact landowners and other private parties, by giving the Secretary of the Interior greater regulatory flexibility and discretion in managing the reintroduced species to encourage recovery in collaboration with partners, especially private landowners. The Secretary may designate as an experimental population a population of endangered or threatened species that will be released into habitat that is capable of supporting the experimental population outside the species’ current range. Under section 10(j) of the Act, we must make a determination as to whether or not an experimental population is essential to the continued existence of the species based on best available science. Our regulations define an essential population as one whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are classified as nonessential (50 CFR 17.80(b)).

We treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations under section 4(d) of the Act with respect to that population (50 CFR 17.82). We may apply any of the prohibitions of section 9 of the Act to the members of an experimental population, including the prohibitions against the sale or possession, import and export, or “take” (50 CFR

17.82). The designation as an experimental population allows us to develop tailored “take” prohibitions that are necessary and advisable to provide for the conservation of the species. The protective regulations adopted for an experimental population will contain applicable prohibitions as appropriate, and exceptions for that population, allowing us discretion in devising management programs to provide for the conservation of the species.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. We treat an NEP as a threatened species when the population is located within the National Wildlife Refuge System (NWRS) or unit of the NPS, and those agencies are required to consult with us under section 7(a)(2) of the Act (50 CFR 17.83; see 16 U.S.C. 1539 (j)(2)(C)(i)). When NEPs are located outside of an NWRS or NPS unit, for the purposes of section 7, we treat the population as proposed for listing and only sections 7(a)(1) (50 CFR 17.83) and 7(a)(4) (50 CFR 402.10) of the Act apply (50 CFR 17.83). In these instances, NEPs allow additional flexibility in managing the nonessential population because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find by regulation that such

release will further the conservation of the species. In making such a finding the Service uses the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see *Effects on Wild Populations*, below);

(2) the likelihood that any such experimental population will become established and survive in the foreseeable future (see *Likelihood of Population Establishment and Survival*, below);

(3) the relative effects that establishment of an experimental population will have on the recovery of the species (see *Effects of the Experimental Population on Grizzly Bear Recovery*, below); and

(4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (see *Actions and Activities in Washington That May Affect Reintroduced Grizzly Bears*, below).

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act must provide:

(1) appropriate means to identify the experimental population, including but not limited to its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population (see *Means To Identify the Experimental Population*, below);

(2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see *Findings*, below);

(3) management restrictions, protective measures, or other special management concerns for that population, which may include, but are not limited to, measures to isolate and/or contain



the experimental population designated in the regulation from nonexperimental populations (see *Management Restrictions, Protective Measures, and Other Special Management*, below); and

(4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see *Review and Evaluation of the Success or Failure of the NEP*, below).

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, affected Tribal governments, local government agencies, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, rules issued under section 10(j) of the Act represent an agreement between the Service, the affected State and Federal agencies, Tribal governments, local governments, and persons holding any interest in land and water that may be affected by the establishment of an experimental population. Hereafter in this document, we refer to the proposed regulations for establishing the NEP of the grizzly bear within the U.S. portion of the NCE as the “10(j) rule.”

## **Proposed Experimental Population**

### ***Experimental Population Area***

The proposed geographic area for the grizzly bear nonessential experimental population (NEP) occurs within the U.S. portion of the NCE and encompasses the entire NCE Recovery Zone. It also includes all of Washington State except an area in northeastern Washington around the Selkirk Ecosystem Recovery Zone where there is currently a population of grizzly bears (see figure 2). The northeastern boundary of the NEP is defined by the Kettle River from the international border with Canada, downstream to the Columbia River, to its confluence with the Spokane River, then upstream on the Spokane River to the Washington–Idaho border. We are proposing to designate an NEP area beyond the NCE Recovery Zone to allow management of grizzly bears within the NCE Recovery Zone as well as grizzly bears that move outside of the NCE Recovery Zone.

In the U.S. portion of the NCE, the majority of land is under Federal ownership managed primarily by the NPS, including North Cascades National Park (NP), Ross Lake National Recreation Area (NRA), and Lake Chelan NRA, with some areas managed by the USFS.

In drawing our NEP area and management zone boundaries, we considered the following data points: Those areas where a population of grizzly bears could be successfully established; an evaluation of the opportunities for grizzly bears to move between blocks of high-quality grizzly bear habitat in Washington (Singleton et al. 2004, p. 96, USFWS 2022, pp. 305–309, Kasworm et al. 2022b, entire); the potential for human–bear conflicts; grizzly bear movement data from other populations; the location of the closest existing grizzly bear populations and historical observations of dispersers from those populations; ease of implementation (using readily discernible features for management zone boundaries such as roads and Federal land ownership boundaries); and input from NPS, WDFW, USFS, and the public.

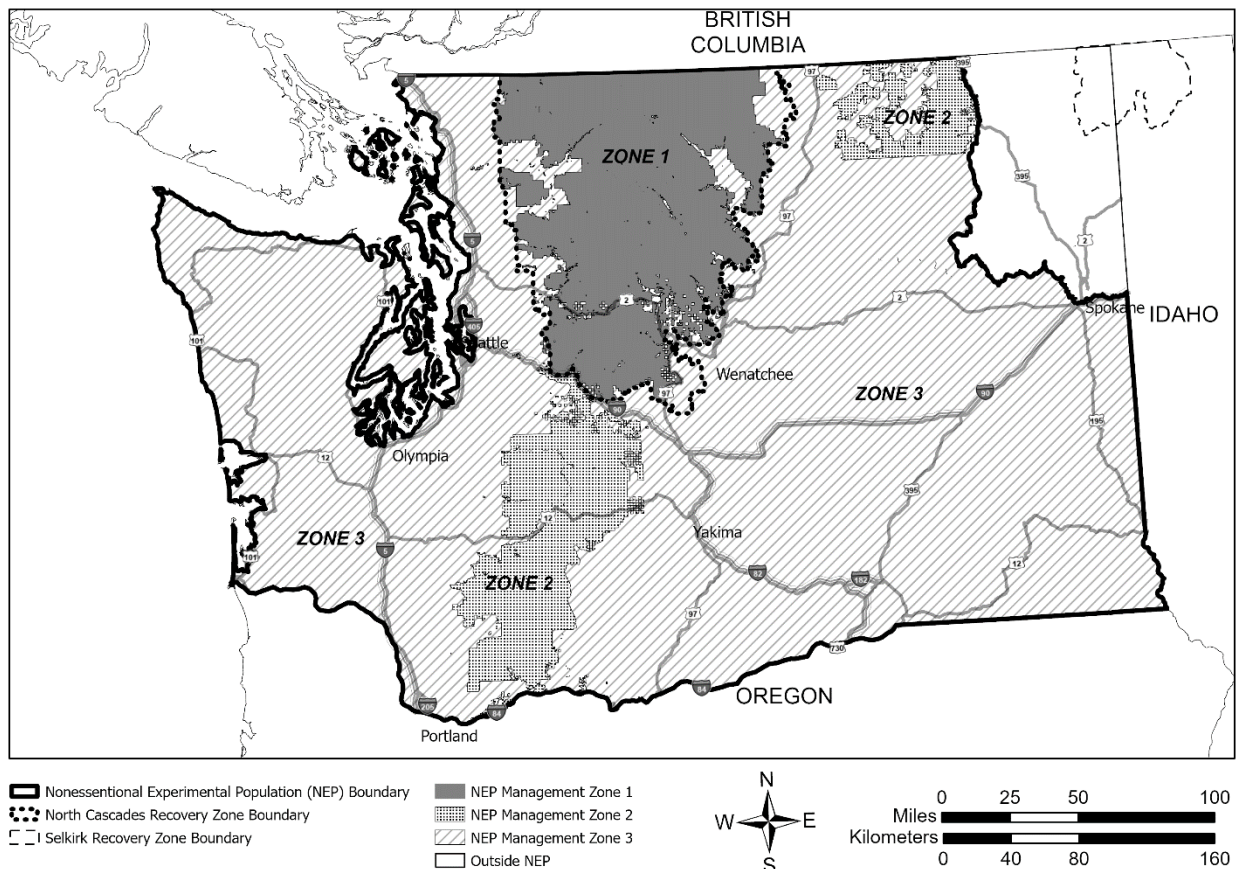


Figure 2. Map of proposed grizzly bear NEP and NEP management zones.

### *Management Zones*

Within the NEP area, we identified three management zones (see figure 2) based on suitability for occupancy by grizzly bears and the likelihood of human–bear conflicts, which are often associated with private lands. We are proposing to establish these management zones to help focus grizzly bear conservation within the NCE Recovery Zone and to allow more flexible management in the remaining portion of the NEP. Details of the management regulations we are proposing within each management zone are provided below in *Management Restrictions, Protective Measures, and Other Management Concerns*.

Management Zone 1 would include the Mt. Baker-Snoqualmie NF and Okanogan-Wenatchee NF north of Interstate 90 and west of Washington State Route 97, as well as the North Cascades NPS Complex. To define the proposed Management Zone 1 boundary, we used the NCE Recovery Zone but then excluded State-owned and private lands so that it is easily identifiable. Management Zone 1 would be the primary area for the experimental population restoration and would serve as core habitat for survival, reproduction, and dispersal of the NEP. Management Zone 1 primarily would consist of remote protected lands that support grizzly bear diet, habitat, and reproduction needs (see *Behavior and Life History* section above). Therefore, Management Zone 1 would serve as the core habitat for grizzly bear reintroductions, where all release sites would occur (see *Release Areas*, below).

Management Zone 2 would include the Mt. Baker-Snoqualmie NF and Okanogan-Wenatchee NF south of Interstate 90, Gifford Pinchot NF, and Mount Rainier National Park. Management Zone 2 also would include the Colville NF and Okanogan-Wenatchee NF lands east of Washington State Route 97 within the experimental population boundary, though it is less likely that bears will disperse into this area due to the distance from proposed Management Zone 1 to the west. Management Zone 2 is meant to accommodate natural movement or dispersal by

grizzly bears. We expect some level of grizzly bear transience as well as occupancy in Management Zone 2 because of the existing habitat on public lands with limited human influence, resulting in lower potential levels of human–bear conflict (due to food storage regulations and limited human-attractants).

Management Zone 3 would comprise all other lands outside of proposed Management Zones 1 and 2 within the NEP boundary, and outside the area excluded near the Selkirk Ecosystem Recovery Zone. Beyond the Selkirk excluded area, the outer boundary of Management Zone 3, and thus outer boundary of the NEP area, would be delineated by the Washington State border. Management Zone 3 would contain large areas that may be incompatible with grizzly bear presence due to high levels of private land ownership and associated development and/or potential for bears to become involved in conflicts and resultant bear mortality (although some areas within this management zone are capable of supporting grizzly bears, and some grizzly bears may occur here). The intent of Management Zone 3 is to allow more management flexibility to minimize impacts of grizzly bears on landowners and other members of the public.

The NEP area contains human infrastructure and activities that pose some risk to the success of the restoration effort from human-caused mortality of grizzly bears. These activities include both controllable and uncontrollable sources of mortality. Controllable sources of mortality are discretionary, can be limited by the managing agency, and include permitted take and direct agency control. Sources of mortality that will be difficult to limit, or may be uncontrollable, occur regardless of population size and include things such as natural mortalities, illegal take, and accidental deaths (e.g., vehicle collisions, capture-related mortalities, defense-of-life kills) (USFWS 2022, pp. 144–145). Accidental mortality caused by vehicle collision is difficult to control but is not anticipated to be a significant cause of mortality. The main types of human-caused mortality in the GYE, NCDE, CYE, and Selkirk Ecosystem Recovery Zones result from human site conflicts (e.g., when grizzly bears are drawn to areas with unsecured

chickens, garbage, or bird and livestock feed where landowners attempt to deter the bear or protect themselves), self-defense, mistaken identification kills, and illegal kills, some of which can be partially mitigated through management actions (Servheen et al. 2004, p. 21; USFWS 2022, p. 144). We expect the same types of human-caused mortality identified within other recovery zones to occur within the NEP.

Despite these human-caused mortalities, grizzly bear populations in other recovery zones have continued to increase in size and expand their current distribution (USFWS 2022, pp. 167–168). The NEP would build on continuing success in recovering grizzly bears through longstanding cooperative and complementary programs by a number of Federal, State, and Tribal agencies. In particular, through coordination of policy, planning, management, and research, and communication between Federal, State, Tribal and Provincial agencies, the IGBC has proven to be a successful model for agencies working cooperatively and coordinating recovery efforts over multiple jurisdictions, and substantial progress has been made toward recovering the species in other ecosystems. With continued coordination through the IGBC NCE subcommittee, we do not expect Federal, State, Tribal, or private actions and activities in Washington to have significant adverse effects on grizzly bears within the proposed NEP area.

For management of grizzly bears on Tribal lands, we expect to defer monitoring and day-to-day management of grizzly bears to the relevant Tribe if they have the interest and capacity to undertake that management. Otherwise, we expect that the USFWS and/or other Federal and/or State bear management staff could assist in grizzly bear management on these Tribal lands per terms in a memorandum of understanding (MOU) involving those agencies in coordination with the affected Tribe, which would be put in place prior to agency involvement on Tribal lands.

Grizzly bears in Washington State that are not within the NEP area, i.e., grizzly bears that are within and around the Selkirk Ecosystem Recovery Zone (see figure 2), would not be subject to management under this proposed rule; they are subject to the existing special rule for grizzly bears under section 4(d) of the Act, found at 50 CFR 17.40(b).

## *Release Areas*

Proposed grizzly bear release areas would be limited to Federal lands and include portions of North Cascades NP and Ross Lake NRA, administered by NPS, and Glacier Peak, Pasayten, and Stephen Mather Wilderness areas, administered by USFS. Primary release sites would be remote areas that could be accessed by helicopter and capable of accommodating helicopter support staging areas (NPS and FWS 2023, p. 29). Secondary release sites would be remote areas that could be accessed by vehicle or boat transportation and capable of accommodating appropriate staging areas. Secondary release sites would be used only if helicopter sites were not available due to weather limitations affecting flight safety. Staging areas would be identified in previously disturbed areas large enough for the safe landing of a helicopter, parking for a fuel truck, and any other grizzly bear transport and handling needs.

Release sites would be chosen based on habitat suitability, connectivity to other release sites within the NEP, and the need to have released grizzly bears in close proximity to one another to facilitate interaction and breeding. Additional criteria for acceptable release sites include the following:

- Areas that consist largely of high-quality seasonal habitat; specifically, areas that contain readily available berry-producing plants that are known grizzly bear foods.
- Areas that are largely roadless, and an adequate distance from high visitor use and motorized areas and have low human use.
- Areas with a suitable helicopter landing site or a suitable vehicle- or boat-accessible site with little public use.
- Future additional release sites would be informed by grizzly bear resource selection as determined through monitoring of grizzly bears previously released into the NEP.

Sites for subsequent releases of grizzly bears would be chosen based on the criteria listed above and limited to Federal lands, unless otherwise authorized by relevant authorities and landowners.

## *Capture and Release Procedures*

Grizzly bears will be captured using baited foot snares or culvert traps as a primary method. Helicopters will be used to transport culvert traps from which grizzly bears would be released. It is possible that helicopter support will also be used for the capture of grizzly bears through use of helicopter-based capture darting. The capture and release of grizzly bears will take place during the summer (June–September), depending on the selected capture and release site(s) and food availability. Grizzly bears will be moved and transported from capture locations to release staging areas by vehicle. Grizzly bears will then be transported from staging areas to remote release sites by helicopter or by vehicle or boat on NPS or USFS lands in Management Zone 1 (NPS and USFWS 2023, p. 29). Each release could take up to 8 hours (1 day) depending on the distance between staging and release areas, potentially resulting in 5 to 10 days of helicopter use per year for releases. Helicopters could make up to four round trip flights, traveling approximately 500 ft (150 m) above the ground, and make up to four landings in wilderness per release, which would be necessary for the release of each grizzly bear and dropoff and retrieval of staff and the culvert trap. All operations would be conducted during daylight hours.

We will attempt to capture five to seven bears per year. Capture success and availability of bears will govern the exact annual numbers captured and source population(s). Additional grizzly bears could be needed depending on a variety of factors, including human-caused mortality, genetic limitations, population trends, and the population's sex ratio. Population modeling indicates the need for release of 36 bears into the NEP to obtain an initial population of 25 individuals in approximately 8–9 years (NPS and USFWS 2023, p. 33). Until a population of 25 individuals is reached, we will capture and release grizzly bears to replace any previously released grizzly bears that die. We expect additional releases to maintain genetic diversity in this population as determined by long-term monitoring. Bears released would be roughly 60 percent or greater females, and ages of all released animals (males and females) are expected to be 2–6 years old.

## **How Does the Experimental Population Contribute to the Conservation of the Species?**

Under 50 CFR 17.81(b), before authorizing the release as an experimental population, the Service must find by regulation that such release will further the conservation of the species. We explain our rationale for making our finding below. In making such a finding, we must consider effects on donor populations, the likelihood of establishment and survival of the experimental population, the effects that establishment of the experimental population will have on recovery of the species, and the extent to which the experimental population will be affected by Federal, State, or private activities.

### ***Effects on Wild Populations***

Our regulations at 50 CFR 17.81 require that we consider any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere. The preferred donor populations for the proposed reintroduction of grizzly bears to the NEP occur in south-central British Columbia or in the United States, such as the NCDE or GYE. We will seek source areas that have a healthy grizzly bear population so that removal of grizzly bears would not affect population viability, as the capture and removal of grizzly bears would be considered a loss for the source population.

Sourcing NEP grizzly bears from NCDE, GYE, and/or south-central British Columbia populations will not negatively affect the donor populations for the following reasons. The NCDE and GYE demonstrate stable to slightly increasing demographic trends with an estimated 1,114 grizzly bears in the NCDE and 1,069 bears in the GYE in 2021. Further, grizzly bear distribution has expanded well beyond these recovery zones (figure 1; USFWS 2022, pp. 63–67). Given the demonstrated resilience and recovery trajectory of these populations in the United States and Canada, and the limited number of grizzly bears that will be translocated (36 grizzly bears to obtain an initial population of 25 individual bears), we expect the donor populations in the NCDE and the GYE to remain stable and persist despite the translocation of these 36 individuals for the NEP. Further, the number of individuals necessary for the NEP is minimal in



relation to the demographic recovery criteria and the annual mortality of the NCDE and GYE populations. South-central British Columbia has several GBPU's with a sufficient number of bears and conservation status secure enough to use as sources. Wells Gray, North Purcells, Central Rockies, and North Selkirk GBPU's have a combined total estimated grizzly bear population of 1,100, and populations are stable or increasing (Environmental Reporting BC, 2020, entire).

In addition to sourcing NEP grizzly bears from healthy populations, we will prioritize source areas that are ecologically similar to the NCE area and will prioritize capturing grizzly bears that do not have a history of coming into conflict with humans. We will attempt to capture grizzly bears that share a similar ecology and food economy to potential release areas. Food economy refers to the dominant foods available to grizzly bears in a given area. Dominant foods in the NCE are expected to be similar to the west side of the NCDE in northwestern Montana, adjacent grizzly bear habitat in British Columbia, Canada, and grizzly bear habitat in south-central interior British Columbia. In these areas, berries are the dominant food source providing calories and ultimately fat production necessary for a grizzly bear to survive hibernation and reproduce. As a result, these areas will most likely be selected for capturing grizzly bears for release into the NEP as compared, for example, to areas where grizzly bears rely predominately on salmon. However, mortality thresholds in these source populations may limit the number of grizzly bears available for the NEP reintroduction effort, and other ecosystems, such as the GYE, may be considered in those circumstances.

Lastly, the entities managing the source area must also be willing to donate grizzly bears that meet the selection criteria and allow trapping of an adequate number of grizzly bears. We will coordinate in advance with the relevant authorities managing the potential source populations before seeking to capture and translocate grizzly bears. All applicable regulatory requirements would be fulfilled prior to translocation of grizzly bears.

### ***Likelihood of Population Establishment and Survival***

In our findings for designation of an experimental population, we must consider if the reintroduced population will become established and survive in the foreseeable future. In this section of the preamble, we address the likelihood that populations introduced into the proposed NEP area will become established and survive. The term “foreseeable future” appears in the Act in the statutory definition of “threatened species.” However, the Act does not define the term “foreseeable future.” Similarly, our implementing regulations governing the establishment of experimental populations under section 10(j) of the Act use the term “foreseeable future” (50 CFR 17.81(b)(2)) but do not define the term. Our implementing regulations at 50 CFR 424.11(d), regarding factors for listing, delisting, or reclassifying species, set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions as it relates to life history of the species and its response to threats. While we use the term “foreseeable future” here in a different context (to determine the likelihood of experimental population establishment and to establish boundaries for identification of the experimental population), we apply a similar conceptual framework. Our analysis of the foreseeable future uses the best scientific and commercial data available and considers the timeframes applicable to the relevant effects of release and management of the species and to the species’ likely responses in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

For the purposes of this proposed rule, we define the foreseeable future for our evaluation of the likelihood of survival and establishment of this proposed NEP as approximately 30–45 years. We selected this timeframe because it captures approximately two to three generation intervals for the grizzly bear. A generation interval is the approximate time that it takes a female

grizzly bear to replace herself in the population. Given the longevity of grizzly bears, two to three generation intervals represent a time period during which a complete turnover of the population would have occurred and any positive or adverse changes in the status of the population would likely be evident. Additionally, because human-caused mortality is the primary threat to the species, this timeframe considers the possibility that USFS land management plans, the primary regulatory mechanism managing human access to grizzly bear habitat, could go through at least one revision.

In evaluating the likelihood of establishment and survival of this proposed NEP in the foreseeable future, we consider the extent to which causes of extirpation in the NEP area have been addressed, habitat suitability and prey availability within the NEP area, and existing scientific and technical expertise and experience with reintroduction efforts. As discussed below, we expect that grizzly bears will become established during the foreseeable future.

#### *Addressing the Causes of Extirpation in the Experimental Population Area*

In the NEP, the northwest fur trade was probably the primary driver of rapid grizzly bear decline, while the effects of mining, logging, livestock production, agriculture, and development also fragmented and degraded grizzly bear habitat and increased conflict-related mortality (Almack et al. 1993, p. 3; Rine et al. 2020, pp. 5–13; USFWS 2022, p. 143). By 1975, grizzly bear populations in the U.S. portion of the NCE had been reduced in number and restricted largely to remote areas (USFWS 2022, p. 52). Though the NEP currently contains one of the largest contiguous blocks of Federal land remaining in the lower 48 States, diminished grizzly bear numbers from past intensive killing and isolation from other grizzly bear populations contributed to the extirpation of the historic population and the low likelihood of natural recolonization (Lewis 2019, p. 7; USFWS 2022, p. 52; 88 FR 41560, June 27, 2023).

Regulation of human-caused mortality has substantially reduced the number of grizzly bear mortalities caused by humans. Because road access was identified by the IGBC as one of the most imminent threats to grizzly bears, the recovery plan recommended that road

management be given the highest priority for grizzly bear recovery (USFWS 1993, pp. 21–22; USFWS 2022, p. 52). Land management agencies across grizzly bear range have incorporated habitat management guidance from the recovery plan (USFWS 1993, entire). In addition to road access, the IGBC has identified and implemented conflict prevention measures in the U.S. portion of the NCE including sanitation measures, signage about grizzly bears and sanitation in the national park and the national forests, and funding for education and outreach programs (IGBC 2019, p. 9). North Cascades NP and several nonprofit organizations provide resources, educational material, and workshops to the public to prevent bear conflict in the NCE. Regulating human-caused mortality through habitat management and conflict prevention are effective approaches to reduce negative effects to grizzly bear populations, as evidenced by increasing grizzly bear populations in the lower 48 States (USFWS 2022, p. 7). The best available data indicate that, due to ongoing conservation efforts in the GYE, NCDE, CYE, and Selkirk Ecosystem, grizzly bear population trends in these ecosystems are stable or increasing, and range extent has continued to expand (figure 1; USFWS 2022, p. 208). Given that the intent is to implement similar conservation efforts in the NCE Recovery Zone as guided by the IGBC, we can expect human-caused mortality and direct and indirect effects of human activity for the NEP to be reduced to a level such that these threats would not prevent population growth and stability.

### *Habitat Suitability*

As noted above (in *Status of Grizzly Bears in the North Cascades Ecosystem*), five studies conclude that the U.S. portion of the NCE has the habitat resources essential for the maintenance of a grizzly bear population (Agee et al. 1989, entire; Almack et al. 1993, entire; Gaines et al. 1994, entire; Lyons et al. 2018, entire; Ransom et al. 2023, entire). The IGBC NCE Subcommittee had two separate research teams (Almack et al. 1993, entire; Gaines et al. 1994, entire) evaluate an area encompassing more than 10,000 sq mi (25,900 sq km) of the NCE for grizzly bear habitat types and foods. The survey area included all the National Park complex and

most of Mt. Baker-Snoqualmie NF and Okanogan-Wenatchee NF. Each team evaluated the survey area for viable grizzly bear habitat using common criteria, including the presence, abundance, and diversity of grizzly bear foods; habitats of seasonal importance and their distribution; and delineation of human activities (i.e., roads, habitation, timber harvest, recreation). In addition to these criteria, Almack et al. (1993, p. 22) evaluated the study area for grizzly bear habitat according to the seven characteristics identified by Craighead et al. (1982, p. 10): space, isolation, denning, safety, sanitation, vegetation types, and food.

The results of these surveys were presented to a technical review team, which ultimately determined based on the available data, that the U.S. portion of the NCE could support a viable grizzly bear population of 200 to 400 individuals (Servheen et al. 1991, p. 7). More recent work using a suite of spatially explicit, individual-based population models that integrate information on habitat selection, human activities, and population dynamics estimated a mean carrying capacity for grizzly bears in the U.S. portion of the NCE between 250 and 300 grizzly bears (Lyons et al. 2018, entire). Using the modeling framework developed in Lyons et al. (2018, entire), Ransom et al. (2023, entire) evaluated grizzly bear habitat quality and carrying capacity across a range of future climate scenarios through 2099. The net amount of high-quality habitat was shown to increase across all modeled future scenarios as compared to current conditions. Assuming a home range size of 108 sq mi (280 sq km), carrying capacity increased from a baseline of 139 female bears under current conditions to 241–289 female bears (Ransom et al. 2023, p. 6).

Almack et al. (1993, pp. 7–10) and Gaines et al. (1994, pp. 534–356) used Landsat multispectral scanner imagery and field observations to produce vegetation cover maps of the study area according to vegetation structure (e.g., forest, shrub, and barren rock) and community composition. The teams also identified 124 plant species known to be grizzly bear foods through an exhaustive review of sighting reports, scat analysis, and studies conducted on grizzly bears south of Alaska. Analysis of the vegetation maps indicated that 100 of the 124 identified plant

species exist in the U.S portion of the NCE, and every vegetation cover type contained some plants that were on the list. The teams also mapped ranges of wildlife prey species known to occur in the NCE. Salmonid species were more abundant in streams on the western slope of the NCE, and ungulates were dispersed relatively evenly throughout. These results led both teams to conclude that sufficient vegetative grizzly bear foods are readily available in the U.S. portion of the NCE, and the occurrence of wildlife prey species can sustain a grizzly bear population (Almack et al. 1993, pp. 21–22; Gaines et al. 1994, p. 544).

Some developed areas outside of the NCE Recovery Zone but within the NEP, such as industrial timber lands, agricultural areas, and towns and cities, contain habitat resources for grizzly bears. Although these areas may be capable of supporting grizzly bears, human influences may make those areas not conducive or compatible with persistent grizzly bear occupation. Our zoned management approach is intended to allow additional management options for grizzly bears that may move into these areas.

#### *Translocation Expertise and Experience*

Similar grizzly bear translocations to those we will conduct for the proposed NEP have been conducted in the Cabinet Mountains portion of the CYE since the 1990s. Specifically, researchers and managers have been augmenting the CYE's small grizzly bear population by introducing one to two grizzly bears per year in the period 1990–1994 and from 2005 to the present. All augmented bears have originated from the NCDE and British Columbia. The success of the CYE augmentation pilot program prompted additional augmentations between populations in the United States. Beginning in 2005, in cooperation with Montana Department of Fish, Wildlife and Parks, 10 female bears and 8 male bears were moved from the Flathead River to the Cabinet Mountains during 2005–2021 (Kasworm et al. 2022a, pp. 25–33). DNA analysis from hair corrals has been occurring since 2000 and from rub trees since 2012. Based on this analysis, 3 females and 2 males are known to have produced at least 15 first-generation, 23 second-generation, and 4 third-generation offspring. Of 22 bears released through 2020, 8 are known to

have left the target area (1 was recaptured and brought back, 2 returned in the same year, and 1 returned a year after leaving), 3 were killed within 4 months of release, and 1 was killed 16 years after release (Kasworm et al. 2022a, p. 26). Annual survival rates of augmentation bears (0.784) are lower than native subadult female CYE bears (0.852) (Kasworm et al. 2022a, pp. 37–38).

Data collected since the 1988 population estimate now suggest the CYE population may have been even smaller than the previously thought estimate of 15 or fewer individuals in 1988. However, recent data also suggest that the number of grizzly bears in the Cabinet portion of the CYE has increased. Current population size for the CYE is estimated to be 60–65 bears with approximately half this number in the Cabinet Mountains (Kasworm et al. 2022a, p. 42). The population increase in the Cabinet Mountains has occurred almost exclusively through the augmentation effort and reproduction from those individuals (Kasworm et al. 2022a, pp. 31–33). Grizzly bears in the CYE are expected to continue to increase in population and resiliency with ongoing augmentation efforts (USFWS 2022, pp. 229–242).

These data demonstrate our technical expertise, experience, and success with grizzly bear translocations. We will be relying on the same measures for the NEP translocations. Therefore, we anticipate grizzly bear translocations in the NEP to be as successful as those conducted in these other areas. Based on the available data from other grizzly bear populations, we modeled annual population growth rates of 2 to 4 percent and estimated there are likely to be 46–81 grizzly bears (2 percent annual growth) or 62–146 grizzly bears (4 percent annual growth) in the NEP area 30–45 years after translocations are initiated.

### *Summary*

The best available scientific data indicate that the restoration of grizzly bears into the NEP is biologically feasible and would promote the conservation of the species. Specifically, we anticipate that grizzly bears can be successfully reestablished in the NEP for the following reasons:

(1) The reintroduced population will receive ongoing demographic support (population augmentation) from source populations to replace bears that die or are killed until a population of 25 individuals is achieved and to maintain genetic diversity in this population as determined by long-term monitoring (NPS and USFWS 2023, p. 33).

(2) The primary causes of historical grizzly bear extirpation from the region (direct killing by humans and habitat loss as a result of conversion to agriculture and resource extraction) are now regulated to ensure the population will survive and grow (Lewis 2019, pp. 8–9).

(3) An established IGBC NCE Subcommittee can help guide the restoration effort. This subcommittee helps coordinate policy, planning, management, and research with the Federal and State agencies responsible for grizzly bear recovery and management (IGBC 2019, pp. 9–10); Tribal governments are also represented on IGBC subcommittees and engage as desired.

(4) Landscape-scale modeling and studies of available habitat and food resources indicate the NEP area has the capacity to support a self-sustaining population of grizzly bears (Almack et al. 1993, pp. 21–22; Gaines et al. 1994, p. 544; Lyons et al. 2018, p. 29; Ransom et al. 2023, p. 6).

(5) We have experience in successfully translocating grizzly bears in other areas and have established effective protocols (Kasworm et al. 2007, pp. 1262–1265; Kasworm et al. 2022a, pp. 31–33) that we will apply to NEP reintroductions.

Based on these considerations, we anticipate that the reintroduced population of grizzly bears is likely to become established and persist in the proposed NEP.

### ***Effects of the Experimental Population on Grizzly Bear Recovery***

Restoring the grizzly bear to the NEP area and establishing the associated protective measures and management practices under this proposed rule would further the conservation of grizzly bears by establishing another population in a portion of the species' historical range where the species is presently functionally extirpated. Our recovery plan includes a recovery



objective to recover grizzly bears in all of the ecosystems known to have suitable space and habitat (USFWS 1993, pp. 15–16). The NEP area contains one of the largest remaining areas of high-quality habitat for the grizzly bear in the contiguous United States (USFWS 1997, p. 1). Reintroducing grizzly bears into the NEP area and establishing a self-sustaining grizzly bear population focused on the NCE fulfills an important recovery need for the grizzly bear in the contiguous United States.

We assess species' viability through the lens of the conservation biology principles of resiliency, redundancy, and representation (collectively known as the “3Rs”) (USFWS 2016, entire). Resiliency describes the ability of the species to withstand stochastic disturbance events, which is associated with population size, growth rate, and habitat quality. Redundancy is the ability for the species to withstand catastrophic events, for which adaptation is unlikely, and is associated with the number and distribution of populations. Representation is the ability of a species to adapt to changes in the environment and is associated with its ecological, genetic, behavioral, and morphological diversity. Resiliency of grizzly bear ecosystems is measured using both habitat and demographic factors. Despite the moderate condition of habitat, without a known population the NCE currently has no resiliency, and as a result does not currently contribute to redundancy and representation of grizzly bears in the contiguous United States (USFWS 2022, p. 10 –14). If successful, reintroduction in the NCE would improve resiliency by reestablishing a population of the species within its historical range that is demographically viable. Successful reintroduction would also improve redundancy by further reducing the likelihood that any one catastrophic event would affect all populations. It would also increase the ecological diversity of the habitats occupied by the species and improve representation by facilitating adaptation to a variety of ecological settings and potentially increasing the future genetic diversity of grizzly bears. For these reasons, reestablishment of a population of grizzly bears in the NCE as a NEP, if implemented and successful, would increase resiliency, redundancy, and representation, and hence viability, of the currently listed lower 48 States entity.

## ***Actions and Activities in Washington That May Affect Reintroduced Grizzly Bears***

Although the proposed NEP area contains a variety of land ownership types (see *Experimental Population Area*, above), it contains large blocks of land with limited ongoing human influence, such as remote Federal lands (including those managed as designated wilderness), some State lands, and lands acquired for conservation by nongovernmental organizations. These areas provide sufficient high-quality habitat for grizzly bears, and low potential for both displacement and human–bear interactions. However, grizzly bears will likely use other lands within the NEP, depending on human development and other human activities.

Primary land uses on lands in Management Zone 1 (see *Management Zones*, above) include protection and conservation of natural and cultural resources, non-motorized land-based recreation (hiking, climbing, skiing, cycling, camping, hunting), motorized land-based recreation (off-highway vehicle and snowmobile riding), water-based recreation (boating, fishing), hydropower production, timber harvest, mineral extraction, livestock grazing, research, and education. Although much of Management Zone 1 is public land, is largely unavailable and/or unsuitable for intensive development, and contains an abundance of wild ungulates, livestock grazing does occur within the zone on public lands, which may increase the potential for mortality of grizzly bears via lethal control of depredating bears. Grazing allotments make up 17 percent of Management Zone 1; however, only 8 percent of the grazing allotments are currently active. Most of these permits are for grazing cattle, and five allotments allow for sheep grazing, all of which are in the southern half of Management Zone 1 close to Wenatchee and Cle Elum (USDA 2023, entire). Similar land management practices in the GYE and NCDE, and the expanding grizzly bear populations in those areas, indicate that livestock allotments and associated habitat loss are not limiting grizzly bear populations (USFWS 2022, p. 124).

Primary land uses in Management Zone 2 (see *Management Zones*, above) are similar to those in Management Zone 1: Protection and conservation of natural and cultural resources, non-motorized and motorized land-based recreation, water-based recreation, timber harvest, mineral

extraction, livestock grazing, research and education. As described in Management Zone 1, these activities pose some risk to grizzly bears, but will not likely preclude grizzly bear presence in Management Zone 2.

Management Zone 3 (see *Management Zones*, above) contains mostly private land, including developed areas, and areas where agricultural and industrial uses predominate. Large areas in this management zone may be incompatible with grizzly bear presence due to relatively high amounts of private land ownership and associated development and/or potential for bears to become involved in conflicts and resultant bear mortality. Grizzly bears may still occupy portions of Management Zone 3, but human activities will limit their presence.

### **Experimental Population Regulation Requirements**

Our regulations at 50 CFR 17.81(c) include a list of what we should provide in regulations designating experimental populations under section 10(j) of the Act. We explain what our proposed regulations include and provide our rationale for those regulations, below.

#### ***Means to Identify the Experimental Population***

Our regulations require that we provide appropriate means to identify the experimental population, which may include geographic locations, number of individuals to be released, anticipated movements, and other information or criteria. The proposed NEP area encompasses the entire State of Washington except for the area within and around the Selkirk Ecosystem Recovery Zone (figure 3). As discussed below, we conclude that, after initial releases, any grizzly bears found in the NEP area will, with a high degree of likelihood, have originated from and be members of the NEP. However, we recognize that it would not be possible for members of the public to determine the origin of any individual grizzly bear. Therefore, we propose to use geographic location to identify members of the NEP. As such, any grizzly bear within the NEP area, regardless of origin, will be treated as part of the experimental population. Individual grizzly bears dispersing into or out of the experimental population area will assume the status of grizzly bears within the geographic area in which they are found. However, currently, no

population of grizzly bears exists within the NEP area, and the likelihood of a grizzly bear moving into the NEP area from the nearest population of ESA-listed grizzly bears in the Selkirk Ecosystem is small (see *Is the Proposed Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* below).

We anticipate that eventually some grizzly bears may move between portions of the NCE in Canada and the United States (see *Is the Proposed Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* below). Any grizzly bears moving from Canada to the NEP area will be treated as part of the NEP while in the NEP area, with all the associated ESA protections and exceptions of the experimental population. Thus, a grizzly bear originating in Canada but located in the NEP area in the United States would be managed in accordance with the 10(j) rule. Likewise, a bear originating in the NEP but located in the British Columbia portion of the ecosystem would be managed in accordance with appropriate Canadian regulations.

***Is the Proposed Experimental Population Wholly Geographically Separate from Nonexperimental Populations?***

Section 10(j) of the Act requires that an experimental population of a listed species be wholly geographically separate from other populations of the same listed species. Grizzly bears reintroduced in the NEP would be separated from the nearest population of bears in the United States, located in the Selkirk Ecosystem. The NEP is approximately 100 mi (161 km) to the west of the Selkirk Ecosystem, which contains approximately 83 individuals, and the NEP is 75 mi (121 km) from any verified grizzly bear observations to the west of the Selkirk Ecosystem (Proctor et al. 2012, p. 31). The area between the two populations also contains significant portions of human-altered landscape (e.g., major roads, agricultural lands, rural/urban development) or major natural landscape features (e.g., Columbia River) that reinforce continued geographic separation. Due to the highly fragmented landscape between these areas, as well as the distance between these ecosystems, which is beyond the average female dispersal distance of

6.1–8.9 miles (9.8–14.3 km) (McLellan and Hovey 2001, p. 842; Proctor et al. 2004, p. 1108), we conclude the proposed NEP to be wholly separate from all other extant populations of grizzly bears in the United States. Dispersal between the NEP and other populations or the likelihood of overlap is low; therefore, we do not expect natural recolonization of the NEP area could happen on its own.

As noted above, the Act requires that an experimental population of a listed species be wholly geographically separate from other populations of the same listed species. In this case, the listed species is the grizzly bear in the lower 48 States, and thus the NEP is required to be wholly geographically separate only from other populations of the ESA-listed species, that is, other populations within the United States. However, the NEP is also currently separated from any known grizzly bear populations in Canada, which are not part of the listed species. Connectivity from the east in Canada is unlikely as the nearest population is over 100 km across the heavily human-settled Okanagan Valley (North Cascades Grizzly Bear Recovery Team 2004, p. 7, McLellan et al. 2017, p. 2).

The closest GBPU to the north include the Canadian North Cascades GBPU (adjacent to the U.S. portion of the NCE), estimated in 2018 to have 6 grizzly bears, and the Stein-Nahatlatch GBPU (37 km from NCE), estimated to have 22 grizzly bears (Environmental Reporting B.C. 2020, p. 13). Both units are designated as M1, the highest level of conservation concern, according to British Columbia's conservation ranking assessment (Morgan et al. 2020, pp. 19–24) and are designated as “Critically Endangered” by the IUCN Red list (McLellan et al. 2017, p. 2). While the Stein-Nahatlatch GBPU is within the dispersal distance of both male (29.9–41.9 km) and female (9.8–14.3 km) grizzly bears (McLellan and Hovey 2001, p. 842; Proctor et al. 2004, p. 1108) to the North Cascades GBPU, only the northern half of the Stein Nahatlatch GBPU is occupied by grizzly bears (Apps et al. 2008, p. 25; Apps et al. 2014, p. 30). The distance between the North Cascades GBPU and the occupied portion of the Stein-Nahatlatch GBPU is significant and consists of the large Fraser River valley and canyon, the heavily

travelled Trans-Canada Highway, two railways, human settlements, and other developments (USFWS 2022, pp. 321–324). Therefore, dispersal of grizzly bears from the Stein-Nahatlatch GBPU to the NEP is unlikely. As discussed above, restoring a grizzly bear population in the Canadian portion of the NCE through augmentation is under consideration. Should augmentation efforts occur in British Columbia, some grizzly bears reintroduced into the Canadian portion of the ecosystem may likely move into the proposed NEP area in the United States, either as a transient that returns to Canada or that ultimately remains in the United States.

A restored population of grizzly bears in British Columbia would not affect the designation of a section 10(j) experimental population of grizzly bear listed in the United States because the “wholly geographic” separation requirement does not apply. For this reason, we also propose that, upon finalization of the NEP (i.e., on the effective date of the final 10(j) rule), any bears entering the NEP area from Canada would be managed under the final 10(j) rule even if we have not yet implemented the NEP introduction. This would include any of the six current bears in the Canadian portion of the NCE and any bears reintroduced by Canada that travel into the U.S. portion of the NCE before we implement reintroduction of grizzly bears. In other words, if we determine to reintroduce bears to the U.S. portion of the NCE with a final 10(j) rule, but we are not able to implement that reintroduction before grizzly bears are reintroduced in the Canadian portion of the NCE and travel into the NEP area, any grizzly bears entering the NEP from Canada would still be managed pursuant to the 10(j) rule, assuming it is made final and effective.

***Is the Experimental Population Essential to the Continued Existence of the Species in the Wild?***

When we establish experimental populations under section 10(j) of the Act, we must determine whether such a population is essential to the continued existence of the species in the wild. This determination is based solely on the best scientific and commercial data available. Our regulations state that an experimental population is considered essential if its loss would be likely

to appreciably reduce the likelihood of survival of that species in the wild (50 CFR 17.80(b)). All other populations are considered nonessential. Although the experimental population in the U.S. portion of the NCE will contribute to the recovery of the grizzly bear in the United States, several factors suggest the restored population is not essential to the grizzly bear's continued existence in the wild:

(1) Approximately 2,000 grizzly bears exist in other ecosystems in the contiguous United States that are intensively monitored and managed (USFWS 2022, p. 61, see *Historical and Current Range and Grizzly Bear Ecosystems and Recovery Zones*;

(2) We are proposing to capture and translocate a relatively small number of grizzly bears (up to 5–7 per year) from populations that are demographically healthy and therefore will not be measurably affected by this removal (see *Effects on Wild Populations*);

(3) The experimental population is not expected to provide demographic support to the existing grizzly bear populations in the contiguous United States due to geographic distance and existing barriers to dispersal (see *Status of Grizzly Bears in the North Cascades Ecosystem*); and

(4) The experimental population will be established from extant grizzly bear populations (see *Effects on Wild Populations*) and therefore will not possess any unique genetic or adaptive traits that are critical to the survival of the species.

For these reasons, the loss of the experimental population would not appreciably reduce the likelihood of survival of that species in the wild. Therefore, as required by 50 CFR 17.81(c)(2), we find that the proposed experimental population is not essential to the continued existence of the species in the wild, and we propose to designate the experimental population in the U.S. portion of the NCE as an NEP.

### ***Management Restrictions, Protective Measures, and Other Special Management***

Federal, State, and Tribal authorities will manage the reintroduced grizzly bears in the NEP. These entities will collaborate on monitoring, coordination with landowners and land managers, public awareness, and other tasks necessary to ensure successful management of the

NEP consistent with a USFWS-partner agency MOU specific to implementing the 10(j) rule. Specific management considerations related to the experimental population, including prohibitions and exceptions involving the taking of individual animals, are addressed below.

Section 9 of the Act prohibits various actions regarding species listed as endangered, which may be applied as part of protective regulations for experimental populations. Section 9 prohibitions include among other things prohibition against the import or export of species, restrictions on possession, sale, and transport (whether commercial or otherwise), and the prohibition against “take” of any such species. Section 3(19) of the Act defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Experimental population rules may contain specific prohibitions and exceptions, including regarding take; these rules help the reintroduction and management of an experimental population to be compatible with most routine human activities in the expected reestablishment area. The proposed prohibitions and exceptions for grizzly bears in the NEP area are as follows:

*Defense of life*—Grizzly bears in the NEP may be taken in self-defense or in defense of others, based on a good-faith belief that the actions are necessary to protect any individual from bodily harm.

*Deterrence*—Livestock owners, beekeepers, orchardists, farmers, or other individuals are authorized to conduct deterrence of grizzly bears for the purposes of avoiding human–bear conflicts or to discourage bears from using areas near homes and other human-occupied areas. Individuals may deter grizzly bears away from the immediate vicinity 200 yards (yd) (182 meters (m)) of a human-occupied residence or potential conflict area, such as a barn, livestock corral, chicken coop, grain bin, or schoolyard. Once bears have moved beyond the immediate vicinity 200 yd (182 m), hazing is unlikely to be effective and should cease. Any deterrence must not cause lasting bodily injury or death to the grizzly bear. Any person who deters a grizzly bear must use discretion and act safely and responsibly in confronting nuisance grizzly bears. The



USFWS provides guidelines for safe and responsible hazing of grizzly bears in the USFWS Grizzly Bear Hazing Guidelines (USFWS 2020, entire).

*Incidental take*—“Incidental take” is take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; it must be unintentional and not due to negligent conduct. Individuals will not be in violation of the Act for taking a grizzly bear of the NEP, provided: (1) the take is incidental to, and not the purpose of, an otherwise lawful activity; (2) they promptly report the take to the USFWS; and (3) if the take occurs on National Forest System lands within the NEP area, that the USFS has maintained its “no net-loss of core” approach and implemented food storage restrictions throughout Management Zone 1. To avoid illegally shooting a grizzly bear, persons lawfully engaged in hunting and shooting activities must correctly identify their target before shooting. The act of taking a grizzly bear that is wrongfully identified as another species is not considered incidental take and may be referred to appropriate authorities for prosecution.

The “no net-loss of core” approach is described above under *Threats*. Given the importance of maintaining core habitats and restricting human disturbance in these habitats for grizzly bear population establishment and persistence, we are proposing that the exception to the prohibition against incidental take on lands managed by the USFS as National Forest System lands under this 10(j) rule is contingent upon maintenance and implementation of that longstanding approach within the NCE Recovery Zone. This exception would apply to lands managed by the USFS as National Forest System lands throughout the NEP, contingent on the continued use of the “no-net-loss-of-core” approach on USFS lands in Management Zone 1. We are currently coordinating with the USFS to memorialize the “no-net-loss of core” approach for the U.S. portion of the NCE in an updated MOU.

*Research, recovery actions, and relocation*—If we adopt the 10(j) rule as proposed, any employee or agent of the USFWS, and any employee or agent of another Federal, State, or Tribal entity who, as part of their official duties, normally handles large carnivores and is trained and/or

experienced in immobilizing, marking, and handling grizzly bears (which we define as a Federal, State, or Tribal “authority”), may, when acting in the course of official duties, take a grizzly bear in the wild in the NEP area without a permit if such action is necessary for scientific purposes, to aid a law enforcement investigation, to euthanize an injured individual, to dispose of or salvage a dead individual for scientific purposes, or to relocate a grizzly bear to enhance conservation, including to avoid conflict with human activities, to prevent a grizzly bear from becoming habituated to humans, to improve grizzly bear survival and recovery prospects or for genetic purposes, or to relocate nontarget grizzly bears that have been incidentally trapped. Relocation sites will be identified in remote areas away from homes, developed areas, and concentrated human use. When a grizzly bear is captured, the employee or agent will consult with the appropriate land management agency to determine a relocation site that is most suitable for the bear, considering age/sex of the bear, conflict history, and current human use at available relocation sites. Such taking must be coordinated with the USFWS. Non-USFWS or other non-authorized personnel must acquire a permit from the USFWS for these activities.

*Removal of grizzly bears involved in conflict*—Grizzly bears can cause significant property damage, including depredation, or pose a threat to human safety if they become food conditioned, i.e., if they have learned to associate human presence with anthropogenic food because of repeatedly being rewarded with food without consequence (Beausoleil et al. 2022, p. 96). When it is not reasonably possible to eliminate such threat by securing attractants, less-than-lethal deterrence, or relocation, we propose to allow lethal removal of a grizzly bear involved in conflict under certain conditions. Lethal removal of grizzly bears involved in conflict in Management Zone 1 may be conducted by authorized Federal, State, or Tribal authorities in accordance with Service-approved interagency guidelines.

To become an “authorized” Federal, State, or Tribal authority, we must have a written agreement addressing grizzly bear management, such as: an MOU specific to implementing this proposed 10(j) rule; a conference opinion issued by the USFWS to a Federal agency pursuant to

section 7(a)(4) of the Act; an agreement under section 6 of the Act as described in 50 CFR 17.31 for State game and fish agencies with authority to manage grizzly bears; or a valid permit issued by the USFWS pursuant to § 17.32. In addition, conditioned lethal take for livestock owners may be authorized by the USFWS after a confirmed livestock depredation in Management Zone 2. Management Zone 3 will also allow conditioned lethal take authorization for landowners if the USFWS or an authorized agency determines that grizzly bears present a demonstrable and ongoing threat to human safety or to lawfully present livestock, domestic animals, crops, beehives, or other property, and that it is not reasonably possible to otherwise eliminate the threat by live-capturing and releasing the grizzly bear unharmed.

#### *Management Zone Proposed Management Actions*

Management Zone 1 (see *Management Zones* above) proposed management actions include: take of bears in self-defense or defense of others; exemption of take resulting from otherwise lawful activities (e.g., timber harvest, road construction, recreation); intentional deterrence of bears for the purposes of avoiding human–bear conflict and that does not cause harm or death; exemption of take associated with research and recovery actions; relocation or deterrence of bears by Federal, State, or Tribal authorities for recovery purposes; and lethal removal by Federal, State, or Tribal authorities of grizzly bears involved in conflict if a “conflict bear” determination has been made according to Service-approved interagency guidelines that it is not reasonably possible to eliminate the threat through nonlethal means.

Management Zone 2 (see *Management Zones* above) proposed management actions include all actions authorized for Management Zone 1, plus: the ability for Federal, State, or Tribal authorities to relocate bears for single-conflict incidents and the ability for USFWS to issue written time-limited conditioned lethal take authorization to a livestock owner if a depredation of livestock has been confirmed.

Management Zone 3 (see *Management Zones* above) proposed management actions include all actions authorized for Management Zones 1 and 2, plus: the ability for Federal, State,

or Tribal authorities to relocate any bear as a preemptive action to prevent conflict and the ability for USFWS or an authorized agency to issue written time-limited conditioned lethal take authorization to a private landowner to kill a bear presenting an ongoing threat to human safety, livestock, or other property (e.g., compost, chickens, beehives) if there is a demonstrable and ongoing threat and when it is not reasonably possible to eliminate the threat through nonlethal means.

#### *Prohibited Activities*

The proposed 10(j) rule would prohibit individuals to possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any grizzly bear or part thereof from the experimental population taken in violation of the 10(j) rule or in violation of applicable Tribal or State laws or regulations or the Act. The proposed 10(j) rule would also make it unlawful for individuals to attempt to commit, solicit another to commit, or cause to be committed, any take of the grizzly bear, except as expressly allowed in the 10(j) rule.

#### *Public Awareness and Cooperation*

Coinciding with the November 14, 2022, publication in the *Federal Register* of the notice of intent to prepare an EIS (87 FR 68190), we issued a joint news release with the NPS announcing the EIS process and proposed section 10(j) rulemaking and seeking comments as part of the EIS scoping phase. The news release was shared directly with counties and municipalities in the ecosystem, nongovernmental organizations, and other stakeholders. During the 30-day scoping phase, four informational virtual public meetings were held, inviting the public to ask questions about the EIS process, section 10(j) experimental populations, and grizzly bear recovery. Representatives from the Service and NPS also participated in numerous news media interviews to raise awareness about the EIS process, section 10(j) rulemaking, and associated public comment period.

Similar techniques will be used during the comment period for the proposed 10(j) rule and DEIS to increase awareness and engage the public, including the distribution of a news

release, virtual and in-person public meetings, media features, and the direct sharing of information. If the USFWS decides to designate grizzly bears reintroduced to the U.S. portion of the NCE as a nonexperimental population with the 10(j) rule, further public outreach and education will occur, both in the media and in the community. This may take the form of educational programs in local communities on the topics of bear conflict prevention and the management tools available under the 10(j) rule. Direct outreach and briefings to local governments and community organizations are also anticipated. Many different Federal, State, Tribal, and local government agencies and organizations in the State of Washington have wildlife education programs that can be partnered with and supported.

#### *Interagency Consultation*

As stated above under *Statutory and Regulatory Framework*, for purposes of section 7(a)(2) of the Act, our section 10(j) regulations (50 CFR 17.83) provide that NEPs are treated as species proposed for listing under the Act except on NPS and NWRS lands, where they are treated as a threatened species for the purposes of section 7(a)(2) consultations. Therefore, Federal agency actions not affecting NPS lands or NWRS lands would be required only to confer with the USFWS under the terms of section 7(a)(4) of the ESA. On the other hand, Federal agency actions affecting grizzly bears within the experimental population area on NPS lands or NWRS lands would be required to consult with the USFWS under section 7(a)(2) of the ESA. The provisions of section 7(a)(1) of the ESA would still apply within the NEP area.

#### ***Review and Evaluation of the Success or Failure of the NEP***

##### *Monitoring and Evaluation*

All translocated grizzly bears will be fitted with global positioning system (GPS) collars prior to release to aid in monitoring habitat use and spatial distribution, and tissue samples will be collected to establish baseline information for genetic monitoring purposes. Monitoring of the releases and subsequent population monitoring will follow radio collaring and genetic monitoring techniques used in the Cabinet Mountains grizzly bear augmentation effort

(Kasworm et al. 2022a, pp. 9–16). Periodic recaptures will be conducted to maintain a GPS-collared sample of the population. Other monitoring is likely to include habitat and resource selection, reproductive success and rate of population growth, genetic composition of the population, and instances of conflicts between humans and grizzly bears. Radio collars that communicate locations from satellites to biologists via periodic downloads will limit the need for aircraft monitoring. However, periodic use of fixed-wing aircraft will be necessary to determine reproductive status. Camera stations and hair-snagging corrals will also be established in remote locations to monitor grizzly bear presence and gather genetic information that could also be used to assess reproductive contributions and monitor genetic diversity.

The USFWS will monitor the status of grizzly bears in the NEP annually and will evaluate the status of grizzly bears in the NEP in conjunction with our species status assessments and status reviews of the grizzly bear. Evaluations in our status reviews will include, but not be limited to: a review of management issues; grizzly bear movements; demographic rates; causes of mortality; project costs; and progress toward establishing a self-sustaining population.

#### *Adaptive Management*

We anticipate that our management will be adaptive, in that we will incorporate new information during the restoration effort. If modifications to grizzly bear monitoring and management are needed, we will coordinate closely with NPS, WDFW, USFS, Tribal Governments, and others to ensure progress toward achieving recovery goals while concurrently minimizing human–grizzly bear conflicts in the NEP area.

#### *Exit Strategy*

In light of the positive 90-day finding on two petitions to delist grizzly bears in the NCDE and the GYE (see *Previous Federal Actions*, above), we acknowledge that the boundaries of the listed entity may change in the future. We anticipate leaving the experimental population designation in place until all grizzly bears have been delisted due to recovery, regardless of whether the boundaries of the listed entity change. However, if grizzly bears experience

unexpectedly high natural mortality, if donor bears are not available, or if we conclude that we and our partners have insufficient funding for an extended period to support management of the NEP, we may consider ending the releases and repealing the NEP designation. This would be done only after close coordination with partners and a new public process where we would propose to repeal the NEP before making any decisions to exit the restoration program.

### **Consultation with State, Local, Tribal, Federal, and Affected Private Landowners**

In April 2018, the USFWS reached out to more than 90 agencies and organizations, including Federal, State, and local elected officials; federally recognized Tribes in Washington and Montana; natural resource and land management agencies; interest groups (including those representing timber, ranching or farming, and recreation interests), and environmental and conservation organizations to discuss a potential section 10(j) experimental population rulemaking and a zoned management approach for possible grizzly bear restoration efforts in the NCE. Between May and July 2018, the USFWS held more than 30 meetings with representatives from 49 different agencies and organizations for receiving feedback on the management framework and the zoned management approach.

In addition, as noted above, the NPS and USFWS provided an opportunity for the public to submit scoping comments on the potential inclusion of a 10(j) rule as part of alternatives to be described through the EIS process. Public scoping meetings were held in November 2022, and the public scoping comment period concluded in December 2022. Feedback from the 2018 outreach meetings and the 2022 EIS scoping period specific to the 10(j) rule were used in the development of this proposed rule.

### **Findings**

Based on the best scientific information available, as described above and in accordance with 50 CFR 17.81, we find that releasing grizzly bears into the NCE would further the conservation of the species, but that this population is not essential to the continued existence of the species in the wild.

## Required Determinations

### *Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094:*

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rulemaking action is significant.

The North Cascades Ecosystem Grizzly Bear Restoration Plan/DEIS analyzes the potential impacts of restoration of grizzly bears to the North Cascades including potential impacts to visitor use and recreational experience (NPS and USFWS 2023, pp. 110–123), human safety (NPS and USFWS 2023, pp. 124–132), and socioeconomic effects of the restoration of grizzly bear on various sectors in a seven-county area (including gateway communities) (NPS and USFWS 2023, pp. 133–148). The DEIS evaluation includes the impacts of restoration of grizzly bear as managed under this proposed section 10(j) rule, which is the agencies' preferred alternative (NPS and USFWS 2023, pp. 35–46). As stated above under *Information Requested*, the DEIS is available for comment from the NPS,

The DEIS evaluates impacts to visitor use and recreational use experience qualitatively. Recreational use of Federal land in the NCE is estimated to be more than 8 million recreation visitor-days per year, most of which is associated with dispersed recreation rather than developed campgrounds or wilderness areas (NPS and USFWS 2023, p. 111). Potential beneficial and adverse impacts on visitor use and experience could result from the initial restoration of grizzly



bears in the NCE, and visitation could increase or decrease depending on visitor interest in or aversion to them (NPS and USFWS 2023, p. 119). Benefits would be derived from the restoration of the grizzly bear population and the opportunity provided to visitors to see grizzly bears in their natural setting. Adverse impacts would include the potential for temporary closures lasting from a few hours to a few days, requiring some visitors to adjust their stay to avoid closed areas, and noise associated with helicopter operations. Compared to current conditions, these impacts, in addition to past, present, and reasonably foreseeable planned actions, would be beneficial. Restoration under this proposed rule would allow for greater wildlife management flexibility that would provide an additional increment of benefit to the visitor use and recreational experience by minimizing negative human–bear conflicts (NPS and USFWS 2023, pp. 123–124).

For potential impacts to public and employee safety, the DEIS qualitatively addresses risks associated with human–grizzly bear encounters related to employees working to restore and manage bears, as well as risks to visitors and residents in and around the NCE (NPS and USFWS 2023, p. 127). Overall, restoration of grizzly bears would have adverse impacts on public and employee safety in terms of potential conflicts with grizzly bears. However, the probability of adverse impacts occurring would be low for a variety of reasons. Restoration would begin in remote areas and occur in low density, and even as density increases as the target population is achieved, existing safety and related protocols would be implemented, such as food storage restrictions, general bear safety education, temporary public closures, and management protocols for the capture and release of bears. These tools have been demonstrated to be effective in reducing impacts to public safety, even in areas with a much higher density of grizzly bears than projected for the ultimate population targeted in this proposal (NPS and USFWS 2023, pp. 130–131). With the implementation of this proposed section 10(j) rule, additional management measures would be available to authorized agencies to use lethal and nonlethal measures to reduce impacts from grizzly bears that move outside the ecosystem, or to mitigate human–grizzly

bear conflicts, including those associated with public safety. These management actions could further reduce the potential for human–bear conflicts and would contribute a reduced potential for adverse impacts on visitor and employee safety (NPS and USFWS 2023, p. 133).

The DEIS evaluates the socioeconomic impacts of the proposed restoration considering a seven-county region of influence (Chelan, King, Kittitas, Okanogan, Skagit, Snohomish, and Whatcom Counties) (NPS and USFWS 2023, p. 133), qualitatively assessing potential impacts to tourism, agricultural and livestock grazing, and timber harvest and mining, as well as the effects to employment in each of these categories. For tourism, occasional localized wilderness closures for public safety during release activities could occur, but these closures would be site-specific and short (hours to days). These closures are not expected to substantially affect tour operators or recreational visitors, including hunters or horseback riders. Any area closures are anticipated to be infrequent and small in scope; therefore, revenue and employment associated with tourism, including hunting, horseback riding, hiking, sightseeing, and tour operations, would not be noticeably affected as a result of implementing restoration under this proposed section 10(j) rule. Collaboration with potential user groups and public outreach and education would likely mitigate many potential tourism-related concerns as wilderness users become accustomed to backcountry practices that reduce chances for negative interactions with grizzly bears. Therefore, potential adverse tourism-related impacts would be mitigated to the extent that no adverse impacts on tourism are expected (NPS and USFWS 2023, p. 148).

Agriculture and livestock grazing operations could experience reduced employment or increased costs of operating cattle ranching operations. Direct impacts may occur through grizzly bear depredation of cattle or sheep. Impacts are somewhat less likely to occur given that no staging or release areas would be near active grazing allotments. Specific descriptions of the effects of potential livestock depredation are described in the DEIS on pages 143–146 and further analyzed in *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*, below. Impacts on timber harvesting and mining from restoration of grizzly bears are anticipated to be intermittent and

short term, lasting minutes to hours, as workers become aware of grizzly bear presence in the area, and grizzly bears avoid areas of active timber harvest and mining (NPS and USFWS, p. 148).

As to employment, restoration of bears could result in impacts on employment related to tourism (both positive and negative), agriculture, livestock grazing, mining, timber harvest, wildlife management, or Federal land management. Wildlife management and Federal land management may experience increases in employment resulting from implementation of this proposed section 10(j) rule as wildlife and Federal land managers capture and release grizzly bears and educate the public.

As displayed in the DEIS, implementation of a proposed section 10(j) designation is expected to reduce the potential for any adverse socioeconomic impacts as compared with other proposed restoration alternatives. The proposed section 10(j) designation allows for additional management measures for lethal and nonlethal actions to minimize and prevent human–grizzly bear conflicts. Additionally, the section 10(j) designation eliminates the requirement for Federal agencies to consult with the Service under section 7(a)(2) of the ESA (except on National Park System or National Wildlife Refuge System lands) for livestock grazing, timber harvest, and mining operations on Federal lands, and under this proposed section 10(j) rule, incidental take of grizzly bear could occur on USFS lands within the NEP area under certain circumstances. As a result, implementation of the proposed section 10(j) designation for grizzly bears would reduce the potential costs and operational constraints that may have temporarily affected regular business operations from the presence of grizzly bear.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of

the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than \$7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Importantly, the impacts of a rule must be both significant and substantial to prevent certification of the rule under the Regulatory Flexibility Act and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed rule, but the per-entity economic impact is not significant, the USFWS may certify.

Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the USFWS may also certify.

Because of the regulatory flexibility provided by designating an NEP in the NCE, we expect this rule not to have significant effects on any activities within Federal lands within the experimental population area. In regard to section 7(a)(2) of the Act, except on National Park Service and National Wildlife Refuge System lands, the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing is unlikely to be required within the NEP. State or private entities pursuing actions with a Federal nexus, such as for grazing permits, timber harvest, or mining claims on USFS lands, will experience no consultation requirements under section 7(a)(2) of the Act (NPS and USFWS 2023, p. 148). In addition, section 7(a)(1) of the ESA requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the experimental population area. As a result, and in accordance with these regulations, if we adopt this rule as proposed, some modifications to the Federal actions within the experimental population area may occur to benefit the grizzly bear, but we do not expect projects on Federal lands to be precluded or likely to be substantially modified as a result of these regulations.

However, this proposed rule, if finalized, would govern the management of reintroduced grizzly bears in the NCE. The presence of reintroduced grizzly bears has the potential to affect small entities involved in ranching and livestock production, particularly beef cattle ranching (business activity code North American Industry Classification System (NAICS) 112111) and sheep farming (business activity code NAICS 112410).

Small businesses involved in ranching and livestock production may be affected by grizzly bears depredating on domestic animals, particularly beef cattle and sheep. Direct effects to small businesses could include forgone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd. However, as detailed further below, we do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector; in addition, the proposed rule designating the grizzly bears as experimental with this special management rule under section 10(j) is in part designed to help minimize the potential for conflicts that could increase costs to ranching and livestock production.

The small size standard for beef cattle farming entities and sheep farms as defined by the Small Business Administration are those entities with less than \$2.5 million for beef cattle ranching and \$3.5 million for sheep farming in average annual receipts (<https://www.sba.gov/document/support-table-size-standards>). As of 2017, there were approximately 9,088 cattle and calf farms and approximately 1,930 sheep farms in Washington (USDA 2019, p. 181). Of these, 13 beef cattle farms and zero sheep farms had average annual receipts above the Small Business Administration thresholds for small entities (USDA 2019, p. 181). Therefore, we find the vast majority of cattle ranches and sheep farms in the State of Washington potentially affected by the reintroduction and management of grizzly bears to be small entities.

Because the reintroduction of grizzly bears will primarily occur only on Federal lands within Management Zone 1, the DEIS evaluates a seven-county region of influence (ROI) that includes Chelan, King, Kittitas, Okanogan, Skagit, Snohomish, and Whatcom Counties. While these counties contain several larger cities, including Bellingham, Everett, Seattle, and Wenatchee, the NCE is located in a predominantly rural area away from large urban areas. The area that covers the NCE makes up approximately 52 percent of the total land area of the ROI (NPS and USFWS, p. 133). Approximately 25 percent of farms in the State of Washington occur

in the ROI (NPS and USFWS, p. 138). Therefore, we estimate approximately 2,272 cattle and calf farms and 483 sheep farms in the ROI. The actual number of farms that may be affected is far less than 25 percent because the grizzly bear release areas primarily occur on Federal lands and do not overlap with active grazing allotments, the ROI includes several counties that extend beyond the borders of the NCE Recovery Zone, and the farms occur in areas where we do not expect grizzly bear occupancy due to low habitat suitability (NPS and USFWS, p. 145).

As of 2015, 773,788 acres of land were actively under permit for cattle and sheep grazing on Okanogan-Wenatchee National Forest, with 320,044 acres occurring within the NCE. Most of the acreage permitted on Okanogan-Wenatchee National Forest was for cattle grazing. There are no grazing permits on Mt. Baker-Snoqualmie National Forest. The 2015 Okanogan-Wenatchee Allotment Information Sheet reports that there were 4,151 animal unit months (AUMs) of permitted sheep and 47,686 AUMs of permitted cattle grazing on national forests within the NCE. In 2015, 4,100 ewe/lamb pairs were grazing, and 4,552 cow/calf pairs were authorized to graze during the summer on national forest service allotments within the NCE. No livestock were present within the national park complex as of 2015 (NPS and USFWS, p. 138).

We assessed whether this proposed rule would have a significant economic impact by estimating the annual number of depredations we expect to occur when the grizzly bear population will be at the population goal of 200 (which is not expected for several decades). Grizzly bear depredation is highly variable between and among years. Estimates of potential grizzly bear depredation were generated using grizzly bear population estimates for the NCDE and livestock losses of cattle and sheep, generating an estimated annual rate of livestock loss per grizzly bear of 0.093 cattle and 0.019 sheep. When these rates were applied to an NCE grizzly bear population of 25, annual livestock loss estimates were 2 to 3 cattle and up to 1 sheep. When these rates were applied to an NCE grizzly bear population goal of 200, annual livestock loss estimates were 18 to 19 cattle and 3 to 4 sheep. Rates developed with these data may represent

overestimates of expected livestock loss in restored populations of grizzly bears in the NCE if grizzly bears do not occupy private lands where more livestock may be present.

It is probable that the actual number of cattle and sheep killed per year would fall within the range of the two estimates (1–19 cattle per year and 1–4 sheep per year). The number would likely fall on the lower end of the range because of a number of factors, including juxtaposition of grizzly bear habitat and grazing; type of grazing operation; distribution and abundance of other predators; and abundance and distribution of prey. Even with this uncertainty, the total number of cattle and sheep depredated within the NCE would result in minimal, adverse impacts on agriculture and the livestock grazing industry, contributing to less than 0.01% of the total number of cattle and sheep in the ROI.

To the extent that some cattle farms will most likely not be impacted by grizzly bear recovery because they are not located in suitable habitat but are included in the total estimate of potentially affected farms, this estimate could understate the percentage of livestock potentially affected. However, for other reasons, this estimate could very well overstate the percentage of farms affected as we recognize that annual depredation events have not been, and may not be, uniformly distributed across the farms operating in occupied grizzly bear range. Rather, grizzly bears seem to concentrate in particular areas where concentrated attractants occur within productive grizzly bear habitat. The extent of depredation would be most influenced by the extent that livestock overlap with grizzly bears, the size of the grazing operation, and the presence of attractants. Additionally, these impacts are somewhat less likely to occur given that no staging or release areas would overlap active grazing allotments.

As of 2017, 4,100 ewe/lamb pairs and 4,552 cow/calf pairs are authorized to graze during the summer on USFS allotments within the NCE. Few livestock are present within the central portion of the NCE because it is a national park. Because only approximately 3 to 7 bears per year would initially be released into the NCE, it is highly unlikely that depredation would occur



during the primary phase; however, depredation is likely to increase in frequency as the population grows over time during the adaptive management phase.

Based on a weighted average market value for a depredated cow/calf of \$1,021.33 (\$2022) and for a depredated sheep of \$311.96 (\$2022), a total estimated depredation of 1–19 cattle per year and 1–4 sheep per year could result in a loss of revenue at auction ranging from \$1,021.33 to \$19,405.29 for cattle and \$311.96 to \$1,247.84 for sheep.

This proposed rule is assessed as alternative C in our DEIS, the preferred alternative for restoring grizzly bears to the North Cascades Ecosystem. Under this alternative, the designation of an experimental population with the special regulations of this proposed rule would allow several forms of take of grizzly bears on Federal and non-Federal land to address conflict situations between grizzly bears and livestock. These forms of take would generally not be allowed were reintroduced grizzly bears not designated as an experimental population, another alternative being considered in our DEIS. Additionally, grizzly bears would be released only into Federal lands in Management Zone 1, and while we anticipate that bears will move into areas within Management Zones 2 and 3, in these zones, any grizzly bear posing a demonstrable threat to human safety, livestock, or property may be relocated or removed by Federal, State, or Tribal authorities, or with prior written authorization from the USFWS, and any grizzly bear may be deterred to prevent conflict, provided the deterrence does not cause lasting bodily injury or death to the grizzly bear. These flexibilities further reduce the impacts to small businesses.

Agriculture and grazing operations located closest to release areas or high-quality grizzly bear habitat would be the most likely to be affected. However, adverse impacts on agriculture and livestock grazing would be limited compared to the total number of livestock present in or adjacent to the NCE. The potential for impacts would be further reduced by the implementation of this proposed rule, including associated conflict prevention efforts, including the public outreach on minimizing unsecured attractants (e.g., Western Wildlife Outreach 2023; Braaten et al. 2013, pp. 7–8).

Based on the preceding information, we find that the impact of direct effects of grizzly bear depredations on livestock would not be significant. That is, less than 0.01% of the total number of cattle and sheep in the ROI could be affected, and the high end of the annual potential loss of revenue across all farms is estimated at approximately \$22,000. We do not consider either the number of potential livestock affected nor the potential loss of revenue to be a significant economic impact. Considering that less than 25 percent of the total farms in Washington occur within the ROI and no farms occur within proposed grizzly bear release areas, far fewer than 25 percent of farms in Washington would be likely to experience economic impacts. While we are not able to quantify this number, we do find that there would not be a substantial number of small entities impacted.

For the above reasons and based on currently available information, we certify that, if adopted as proposed, the proposed nonessential experimental population designation of grizzly bears would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(1) This rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that, if adopted, this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. Small governments would not be affected because the proposed NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of \$100 million or greater in any year (i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act). This proposed NEP designation of the grizzly bear in the NCE would not impose any additional management or protection requirements on the States or other entities.

### *Takings (E.O. 12630)*

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced population are significantly reduced.

A takings implication assessment is not required because this proposed rule (1) would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

### *Federalism (E.O. 13132)*

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant federalism effects and have determined that a federalism assessment is not required. This proposed rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Washington. Establishing an experimental population of grizzly bears in the NCE Recovery Zone would contribute positively toward the status of the species, which in turn would be factored into future assessments of the status of grizzly bears in the lower 48 States.

We acknowledge a Washington State law that addresses grizzly reintroduction in the State. Revised Code of Washington 77.12.035, Protection of grizzly bears—*Limitation on transplantation or introduction—Negotiations with federal and state agencies*, provides as follows:

The commission shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington State may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with federal and state agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section.

This State law provision governs only the activities of the Washington Department of Fish and Wildlife (WDFW) and prohibits WDFW from transplanting or introducing grizzly bears into the State (see Washington State Office of the Attorney General memorandum to the WDFW (WA AG in litt. 2017)). Further, the State provision is interpreted to require WDFW to protect grizzly bears and develop programs that will encourage their natural regeneration on public lands with suitable bear habitat, and to allow for WDFW's engagement in monitoring, habitat enhancement, and to respond to grizzly bears that are endangering public safety or damaging private property. Id.

We developed this proposed rule in cooperation with WDFW, and in consideration of this Washington State law; grizzly bear reintroduction would occur on Federal lands administered by the NPS or the USFS, and efforts from WDFW to transplant or introduce grizzly bears would not be required. The proposed rule would provide for the State's participation in the management of bears introduced by Federal agencies on Federal lands within the State. For these reasons, no intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected. The proposed rule would operate to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Washington. Therefore, this proposed rule does not have significant federalism effects or implications to warrant the preparation of a federalism assessment pursuant to the provisions of E.O. 13132.

*Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

*Paperwork Reduction Act*

This proposed rule contains existing and new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Service will ask OMB to review and approve the new information collection requirements contained in this rulemaking related to the establishment of an NEP of the grizzly bear in the State of Washington, under section 10(j) of the ESA. OMB has previously approved the information collection requirements associated with permitting requirements associated with native endangered and threatened species, and experimental populations, and assigned OMB Control Number 1018–0094, “Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR parts 10, 13, and 17” (expires January 31, 2024).

Experimental populations established under section 10(j) of the Act, as amended, require information collection and reporting to the Service. The Service would collect information on the grizzly bear NEP to help further the recovery of the species and to assess the success of the reintroduced populations. There are no forms associated with this information collection. The respondents would notify the Service when an incident occurred, so there would be no set frequency for collecting the information. Other Federal agencies would provide the Service with the vast majority of the information on experimental populations under cooperative agreements for the conduct of the recovery programs. However, the public also would provide some information to the Service. The proposed new information collection requirements identified below require approval by OMB:

1. ***Appointment of designated agent***—A designated agent is an employee of a Federal, State, or Tribal agency that is authorized by the Service to conduct grizzly bear management. A prospective designated agent would submit a letter to the Service requesting designated agent status. The letter would include a proposal for the work to be completed and resume of qualifications for the work they wish to perform. The Service would then respond to the requester with a letter authorizing them to complete the work.

2. ***Reporting requirements***—The respondents would notify the Service when an incident occurred, so there would be no set frequency for collecting the information. Other Federal agencies would provide the Service with the vast majority of the information on experimental populations under cooperative agreements for the conduct of the recovery programs. However, the public also would provide some information to the Service. Reporting parties would include, but would not be limited to, individuals or households, businesses, farms, nonprofit organizations, and State/local/Tribal governments. The Service would collect the information by means of telephone calls or emails from the public to Service offices specified in the individual regulations. Standard information collected would include:

- a. Name, address, and phone number of reporting party.
- b. Species involved.
- c. Type of incident.
- d. Take (quantity).
- e. Location and time of reported incident.
- f. Description of the circumstances related to the incident.

3. Some of these contacts would be necessary follow-up reports under rules where the Service has authorized deterrence or lethal take of experimental animals (e.g., livestock depredation or in defense of human life). The Service would collect information in three categories:

- a. *General take or removal.* This type of information relates to nonlethal take that does not result in the death of a grizzly bear, as well as human-related mortality including unintentional taking incidental to otherwise lawful activities (e.g., highway mortalities), animal husbandry actions authorized to manage the populations (e.g., translocation or providing aid to sick, injured, or orphaned individuals), take in defense of human life, take related to defense of property (if authorized), or take in the form of authorized deterrence.
- Lethal take must be reported within 24 hours to both the Resident Agent in Charge and either the Service's Grizzly Bear Recovery Coordinator or the Service's Washington Fish and Wildlife Office.
  - Nonlethal take must be reported within 5 days to either the Service's Grizzly Bear Recovery Coordinator or the Service's Washington Fish and Wildlife Office.
- b. *Depredation-related take.* This type of reporting involves take for management purposes where depredation of livestock or guard dogs is documented and may include authorized deterrence or authorized lethal take of experimental animals in the act of attacking livestock or guard dogs.
- c. *Recovery or reporting of dead individuals and specimen collection from experimental populations.* This type of information is for the purpose of documenting incidental or authorized scientific collection. Most of the contacts with the public would deal primarily with the reporting of sightings of experimental population animals, or the inadvertent discovery of an injured or dead individual.

4. ***Memorandums of Understanding (MOUs)***—The Service would establish MOUs with Federal, State, or Tribal authorities related to the necessary relocation of bears, authorize lethal take of bears within 100 yards (91 m) of legally present livestock or guard dogs

if depredation has been confirmed by the Service or Washington Department of Fish and Wildlife (WDFW), when necessary for public safety, or to protect property. The Service would collect information in three categories:

- a. *Relocation of bears.* Authorized Service, Federal, State, or Tribal authorities may live-capture any grizzly bear occurring in the NEP area to improve grizzly bear survival or recovery. Authorized Service, Federal, State, or Tribal authorities may live-capture grizzly bears in proposed Management Zones 2 or 3 and transport and release those grizzly bears in a remote area (1) if they depredate legally present livestock, (2) if necessary to prevent unnatural use of food materials that have been reasonably secured from the bear, or (3) after aggressive (not defensive) behavior toward humans that constitutes a demonstrable immediate or potential threat to human safety and/or that results in a human injury. Additionally, authorized Service, Federal, State, or Tribal authorities may live-capture any grizzly bear occurring in proposed Management Zone 3 and transport and release bears as a preemptive action to prevent a conflict that appears imminent or in an attempt to break habituated behavior of bears lingering near human-occupied areas.
- b. *Conditioned lethal take.* With prior written agreement from the Service, livestock owners may lethally take a grizzly bear within 100 yards (91 m) of legally present livestock in proposed Management Zones 2 and 3 if a depredation has been confirmed by the Service or an authorized agency. Additionally, the Service, or its designated agents, are authorized to issue prior written authorization to any individual to kill a grizzly bear in proposed Management Zone 3 when necessary for public safety or to protect property.
- c. *Removal of grizzly bears involved in conflict.* Authorized Service, Federal, State, or Tribal authorities may lethally take a grizzly bear in the NEP area if is not



reasonably possible to otherwise eliminate the threat by non-lethal deterrence or live capturing and releasing the grizzly bear unharmed in a remote area agreed to by FWS, WDFW, and the applicable land management agency and if the taking is done in a humane manner. Grizzly bears may be taken in self-defense or in defense of other persons, based on a good-faith belief that the actions taken were to protect the person from bodily harm.

5. ***Recovery or reporting of dead individuals and specimen collection from experimental populations***—This type of information would be for the purpose of documenting incidental or authorized scientific collection and surrender of grizzly bear carcasses as the result of lethal take. Most of the contacts with the public deal primarily would be with the reporting of sightings of experimental population animals, or the inadvertent discovery of an injured or dead individual.

6. ***Obtaining Landowner/Land Management Entity Authorization***—Individuals requesting the written authorizations mentioned above must obtain authorization from the landowner or land management entity, where appropriate.

The Service would use the information described above to document the locations of reintroduced animals, determine causes of mortality and conflict with human activities so that Service managers could minimize conflicts with people, and improve management techniques for reintroduction. The information would help the Service assess the effectiveness of control activities and develop means to reduce problems with livestock for those species where depredation is a problem. Service recovery specialists would use the information to determine the success of reintroductions in relation to established recovery plan goals for the threatened and endangered species involved.

*Title of Collection:* Endangered and Threatened Wildlife, Experimental Populations—Grizzly Bear (50 CFR 17.84).

*OMB Control Number:* 1018–New.

*Form Numbers:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Individuals; private sector; and State/local/Tribal governments.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually for annual report and on occasion for other requirements.

*Total Estimated Annual Nonhour Burden Cost:* None.

Requirement	Number of Annual Respondents	Number of Annual Responses Each	Total Annual Responses	Average Completion Time	Total Annual Burden Hours
<i>Appointment of Designated Agent</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Notification—General Take or Removal (Lethal Take)</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Notification—General Take or Removal (Nonlethal Take)</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Notification—Recovery or Reporting of Dead Specimen and Specimen Collection</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Memorandums of Understanding—Relocation of Bears</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Memorandums of Understanding—Conditioned Lethal Take</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1

State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Memorandums of Understanding–Removal of Bears</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Obtaining Landowner/Land Management Entity Authorization</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Totals:</i>	<i>24</i>		<i>24</i>		<i>24</i>

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov). Please reference OMB Control Number 1018–Grizzly in the subject line of your comments.

#### *National Environmental Policy Act*

In compliance with the National Environmental Policy Act of 1969 (NEPA), we have analyzed the environmental impacts of this proposed rule. We have prepared, jointly with NPS, a DEIS to describe the impacts of restoring grizzly bears to the NCE and establishment of the restored population as experimental and managed in accordance with this proposed rule. The DEIS evaluates options for a regulatory framework, including a rule consistent with section 10(j) of the Act, for the reintroduction and management of grizzly bears in part of the species' historical range in Washington. The DEIS analyzes potential environmental impacts that may result from two action alternatives and the no-action alternative and includes relevant and reasonable measures that could avoid or mitigate potential impacts. The DEIS is available for public review and comment by the NPS as described above in *Information Requested*. We will

complete our NEPA analysis and take that information into consideration in determining whether to finalize and implement this proposed rule.

*Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

Throughout the development of this proposed rule, we have sought the input of Tribal governments near the proposed release site as well as Tribal governments near the potential source populations in the NCDE and GYE. In collaboration with the NPS, we extended an invitation for government-to-government consultation to all federally recognized Tribes in the proposed NEP area and formally met with Tribes that have requested government-to-government consultation. Corresponding with the start of the EIS process in November 2022, all Tribes in Washington, and the Nez Perce Tribe in Idaho were invited to consult on grizzly bear recovery and the DEIS assessing options to restore grizzly bears to the NCE. An invitation to consult specifically on the development of the 10(j) rule was also sent to all Tribes in Washington in February 2023. Invitations to consult were also sent in March 2023 to Tribal governments near the potential source populations in the NCDE and GYE, including in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. We are available to meet with other Tribes that request government-to-government or informal

consultation and will fully consider information and comments received through the consultation process. We will also consider all comments received from Tribes and Tribal members during the public comment period on this proposed rule.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### *Clarity of This Regulation (E.O. 12866)*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### **References Cited**

A complete list of all references cited in this proposed rule is available upon request from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or online at <https://www.regulations.gov> in Docket No. FWS–R1–ES–2023–0074.

## Authors

The primary authors of this proposed rule are staff of the USFWS Washington Fish and Wildlife Office, along with staff of the Grizzly Bear Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

## Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.11 in paragraph (h) by revising the entry for “Bear, grizzly” under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* * * * *				
Bear, grizzly	<i>Ursus arctos horribilis</i>	U.S.A., conterminous (lower 48) States, except where listed as an experimental population	T	32 FR 4001, 3/11/1967; 35 FR 16047, 10/13/1970; 40 FR 31734, 7/28/1975; 72 FR 14866, 3/29/2007; 75 FR 14496, 3/26/2010; 82 FR 30502, 6/30/2017; 84 FR 37144, 7/31/2019; 50 CFR 17.40(b) <sup>4d</sup> .

Bear, grizzly [Bitterroot XN]	<i>Ursus arctos horribilis</i>	U.S.A. (portions of ID and MT; see § 17.84(l)).	XN	65 FR 69624, 11/17/2000; 50 CFR 17.84(l) <sup>10j</sup> .
Bear, grizzly [North Cascades XN]	<i>Ursus arctos horribilis</i>	U.S.A. (WA, except the portion of northeastern Washington defined by the Kettle River from the international border with Canada, downstream to the Columbia River to its confluence with the Spokane River, then upstream on the Spokane River to the WA-ID border; see § 17.84(y)).	XN	[ <i>Federal Register</i> citation of the final rule]; 50 CFR 17.84(y) <sup>10j</sup> .
* * * * *				

3. Amend §17.84 by:

- a. Revising paragraph (l) introductory text and paragraph (l)(1); and
- b. Adding paragraph (y).

The revisions and addition read as follows:

**§ 17.84 Species-specific rules—vertebrates.**

\* \* \* \* \*

(l) Grizzly bear (*Ursus arctos horribilis*)—Bitterroot nonessential experimental population.

(1) *Where does this rule apply?* (i) The rule in this paragraph (l) applies to the designated Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which is found within the species' historic range and is defined in paragraph (l)(1)(ii) of this section.

(ii) The boundaries of the Experimental Population Area are delineated by U.S. 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with

the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana (See map at the end of this paragraph (l)).

\* \* \* \* \*

(y) Grizzly bear (*Ursus arctos horribilis*)—North Cascades nonessential experimental population.

(1) *Definitions.* Key terms used in this paragraph (y) have the following definitions:

*Authorized agency* means a Federal, State, or Tribal agency designated by the Service in:

(A) A memorandum of understanding to assist in implementing all or in part the specified actions in this paragraph (y);

(B) A conference opinion issued by the Service to a Federal agency pursuant to section 7(a)(4) of the Act;

(C) Section 6 of the Act as described in § 17.31 for State game and fish agencies with authority to manage grizzly bears; or

(D) A valid permit issued by the Service pursuant to § 17.32.

*Depredation* means the confirmed killing or wounding of lawfully present livestock by one or more grizzly bears. The Service or an authorized agency must confirm grizzly bear depredation on lawfully present livestock. Livestock trespassing on Federal lands are not considered lawfully present.

*Deterrence* means an intentional action to haze, disrupt, or annoy a grizzly bear away from the immediate vicinity (200 yards (182 meters)) of a human-occupied residence or potential conflict area with humans, such as a barn, livestock corral, chicken coop, grain bin, or schoolyard.

(A) Once bears have moved beyond the immediate vicinity, hazing is unlikely to be effective and should cease.



(B) Any such action must not cause lasting bodily injury or death to the grizzly bear; refer to current Service grizzly bear hazing guidelines for appropriate methods.

(C) Persons may not attract, track, wait for, or search out a grizzly bear for the purposes of deterrence.

(D) Any person who deters a nuisance grizzly bear must use discretion and act safely and responsibly in confronting the grizzly bear.

*Domestic animal* means an individual of an animal species that has been selectively bred over many generations to enhance specific traits for their use by humans, including for use as pets. Domestic animal includes livestock.

*Federal, State, or Tribal authority* means an employee or designee of a State, Federal, or Indian Tribal government who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears.

*Grizzly bear involved in conflict* means a grizzly bear that has caused depredation to lawfully present livestock; used foods that are unnatural for grizzly bear consumption and that had been reasonably secured; displayed toward humans aggressive behavior that constitutes a demonstrable or potential threat to human safety; or has had an encounter with people resulting in a substantial human injury or loss of human life.

*Livestock* means cattle, sheep, pigs, horses, mules, goats, domestic bison, alpacas, llamas, donkeys, and herding and guarding animals (e.g., dogs used for herding or guarding livestock). Livestock excludes poultry. Livestock also excludes nonferal dogs that are not being used for livestock guarding or herding.

(2) *Where is the grizzly bear designated as a nonessential experimental population (NEP)?* (i) The grizzly bear NEP includes Washington State except the portion of northeastern Washington defined by the Kettle River from the international border with Canada, downstream to the Columbia River, to its confluence with the Spokane River, then upstream on the Spokane River to the Washington–Idaho border. As provided by 16 U.S.C. 1539(j)(2)(C)(ii), the NEP

does not include critical habitat under the Act. The area shown in figure 1 to paragraph (y)(2) of this section will remain designated as an experimental population unless future rulemaking determines:

(A) The reintroduction has not been successful, in which case the NEP boundaries might be altered or the regulations in this paragraph (y) might be removed; or

(B) The grizzly bear is recovered and delisted in accordance with the Act.

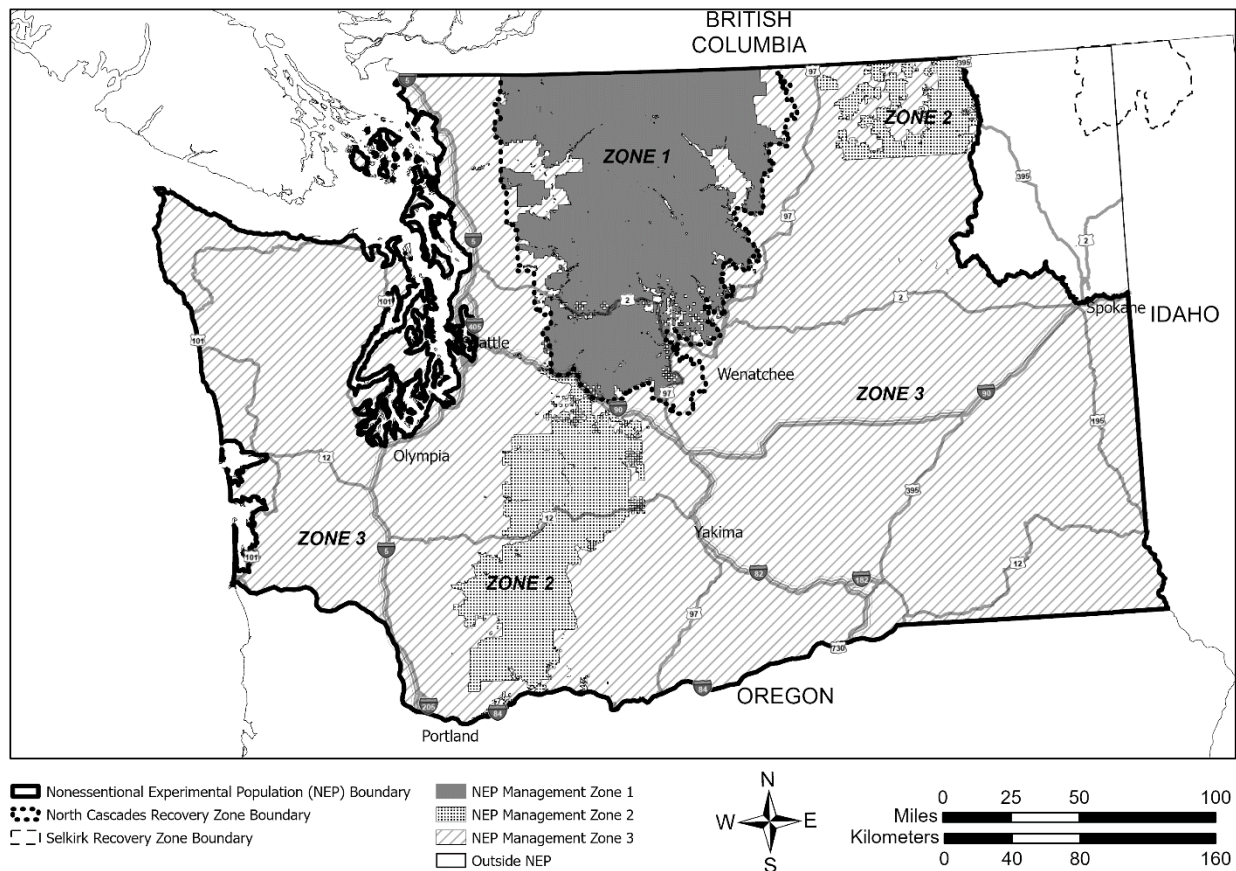
(ii) Management Zone 1 includes the Mt. Baker-Snoqualmie National Forest and Okanogan-Wenatchee National Forest north of Interstate 90 and west of Washington State Route 97, as well as the North Cascades National Park Service complex. Management Zone 1 will be the primary area for restoration of grizzly bears and will serve as core habitat for survival, reproduction, and dispersal of the NEP.

(iii) Management Zone 2 includes the Mt. Baker-Snoqualmie National Forest and Okanogan-Wenatchee National Forest south of Interstate 90, Gifford Pinchot National Forest, and Mount Rainier National Park. Management Zone 2 also includes the Colville National Forest and Okanogan-Wenatchee National Forest lands east of Washington State Route 97 within the experimental population boundary. Management Zone 2 includes areas that may be used for natural movement and/or dispersal by grizzly bears and that have a lower potential for human–bear conflicts.

(iv) Management Zone 3 comprises all other lands outside of Management Zones 1 and 2 within the NEP boundary. Management Zone 3 contains large areas that may be incompatible with grizzly bear presence due to high levels of private land ownership and associated development and/or potential for bears to become involved in conflicts with resultant bear mortality, although some areas within this management zone are capable of supporting grizzly bears and grizzly bears may occur there.

(v) Map of the NEP area and associated management zones for the grizzly bear in the North Cascades Ecosystem follows:

Figure 1 to paragraph (y)(2)



(3) *What take of the grizzly bear is allowed in Management Zone 1 of the NEP area?* The exceptions to take described in paragraphs (y)(3)(i) through (vi) of this section apply in Management Zone 1:

(i) *Defense of life.* Grizzly bears may be taken in self-defense or in defense of other persons, based on a good-faith belief that the actions taken were to protect the person from bodily harm. Such taking must be reported as described in paragraph (y)(6) of this section.

(ii) *Deterrence.* Livestock owners, beekeepers, orchardists, farmers, or other individuals are authorized to conduct deterrence of grizzly bears for the purposes of avoiding human–bear conflicts.

(iii) *Incidental take.* Take of a grizzly bear is allowed if:

(A) The take is incidental to, and not the purpose of, an otherwise lawful activity and the take is reported as soon as possible as provided under paragraph (y)(6) of this section; or

(B) The take occurs on National Forest System lands and the U.S. Forest Service has maintained its “no-net-loss-of-core” approach and implemented food storage restrictions throughout Management Zone 1.

(C) Persons lawfully engaged in hunting and shooting activities must correctly identify their target before shooting to avoid illegally shooting a grizzly bear. The act of taking a grizzly bear that is wrongfully identified as another species is not considered incidental take and may be referred to appropriate authorities for prosecution.

(iv) *Take under permits.* Any person with a valid permit issued under § 17.32 by the Service or a designated agent may take grizzly bears pursuant to the terms of the permit.

(v) *Research and recovery actions.* An authorized agency as defined in paragraph (y)(1) of this section may take grizzly bears within the NEP area if such action is necessary:

(A) For scientific purposes;

(B) To relocate or harass (as defined in § 17.3) grizzly bears within the NEP area to improve grizzly bear survival or recovery;

(C) To address conflicts with ongoing or proposed activities in an attempt to improve grizzly bear survival;

(D) To aid a sick, injured, or orphaned grizzly bear, including lethal removal for humane purposes;

(E) To salvage a dead specimen that may be useful for scientific study;

(F) To dispose of a dead specimen; or

(G) To aid in law enforcement investigations involving the grizzly bear.

(vi) *Removal of grizzly bears involved in conflict.* A grizzly bear involved in conflict may be taken, up to and including lethal removal, but only if:

(A) It is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed in a remote area agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land management agency; and

(B) The taking is done in a humane manner by a Federal, State, or Tribal authority of an authorized agency and in accordance with Service-approved interagency guidelines.

(vii) *Reporting requirements.* Any take pursuant to this paragraph (y)(3) must be reported as indicated in paragraph (y)(6) of this section.

(4) *What take of the grizzly bear is allowed in Management Zone 2 of the NEP area?* Grizzly bears in Management Zone 2 will be accommodated through take allowances described in paragraphs (y)(4)(i) and (ii) of this section, in addition to those allowed in Management Zone 1 (see paragraph (y)(3) of this section). “Accommodated” means grizzly bears that move outside Management Zone 1 into these specified areas of Federal lands in the NEP will not be disturbed unless they demonstrate an immediate threat to human safety or livestock.

(i) *Relocation of bears.* With prior approval from the Service, a Federal, State, or Tribal authority may live-capture grizzly bears in Management Zone 2 and transport and release those grizzly bears in a remote location agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land managing agency for any of the following reasons:

(A) When necessary for the purposes of enhancing conservation.

(B) After depredation of lawfully present livestock or unnatural use of food materials that had been reasonably secured from the bear, resulting in conditioning of the bear or significant loss of property.

(C) After aggressive (not defensive) behavior toward humans results in injury to a human or constitutes a demonstrable immediate or potential threat to human safety.

(ii) *Conditioned lethal take.* With prior written authorization from the Service or authorized agency, livestock owners may lethally take a grizzly bear within 100 yards (91 m) of legally present livestock, but only if:

(A) A depredation has been confirmed by the Service or authorized agency.

(B) It is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live capturing and releasing the grizzly bear unharmed in a remote area. If, after 2 weeks from the confirmed depredation, no further depredations have occurred, the authorization will expire.

(C) The taking is done in a humane manner.

(D) The taking is reported as indicated in paragraph (y)(6) of this section.

(E) The grizzly bear carcass is surrendered to the Service.

(5) *What take of the grizzly bear is allowed in Management Zone 3 of the NEP area?* In addition to the take allowances described in paragraphs (y)(5)(i) and (ii) of this section, all take allowed in Management Zones 1 and 2 (see paragraphs (y)(3) and (4) of this section) are also allowed in Management Zone 3 of the NEP.

(i) *Relocation of any grizzly bear.* With prior approval from the Service, a Federal, State, or Tribal authority of an authorized agency may live-capture any grizzly bear occurring in Management Zone 3 and transport and release the bear in a remote location agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land management agency as a preemptive action to prevent a conflict that appears imminent or in an attempt to break habituated behavior of bears lingering near human-occupied areas.

(ii) *Conditioned lethal take.* The Service, or authorized agency, may issue prior written authorization to any person to kill a grizzly bear in Management Zone 3 when necessary for public safety or to protect property, but only if:

(A) The Service or authorized agency determines that a grizzly bear presents a demonstrable and ongoing threat to human safety or to lawfully present livestock, domestic animals, crops, beehives, or other property; and that it is not reasonably possible to otherwise

eliminate the threat by live-capturing and releasing the grizzly bear unharmed. Once the Service or authorized agency determines the threat is no longer ongoing, the authorizing agency will notify the person, terminating the authorization.

(B) The individuals requesting the written authorization are otherwise authorized by the landowner or relevant land management entity.

(C) The taking is done in a humane manner.

(D) The taking is reported as indicated in paragraph (y)(6) of this section.

(E) The carcass is surrendered to the Service.

(6) *What are the reporting requirements for take of grizzly bears in the NEP?* (i) *Lethal take.* Any grizzly bear that is killed under the provisions of this paragraph (y) must be reported within 24 hours to the Service.

(ii) *Nonlethal take.* Any take of a grizzly bear under the provisions of this paragraph (y) that does not result in the death but causes obvious injury to a grizzly bear must be reported within 5 calendar days of occurrence to the Service.

(7) *What take of the grizzly bear is not allowed in the NEP area?* (i) Other than expressly provided by the regulations in this paragraph (y), all other forms of take are considered a violation of section 9 of the Act. Any grizzly bear or grizzly bear part taken legally must be turned over to the Service unless otherwise specified in the regulations in this paragraph (y). Any take of grizzly bears must be reported as set forth in paragraph (y)(6) of this section.

(ii) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any grizzly bear or part thereof from the NEP taken in violation of paragraphs (y)(3) through (5) of this section or in violation of applicable Tribal or State laws or regulations or the Act.

(iii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any take of the grizzly bear, except as expressly allowed in paragraphs (y)(3) through (5) of this section.

(8) *How will the effectiveness of the grizzly bear restoration effort be monitored?* The Service will monitor the status of grizzly bears in the NEP annually and will evaluate the status of grizzly bears in the NEP in conjunction with the Service's species status assessments and status reviews of the grizzly bear. Evaluations in the Service's status reviews will include but not be limited to a review of management issues, grizzly bear movements, demographic rates, causes of mortality, project costs, and progress toward establishing a self-sustaining population.

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